CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 34 **JULY 26, 2000** **NO. 30**

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

(T.D. 00–48)

BONDS

APPROVAL TO USE
AUTHORIZED FACSIMILE SIGNATURES AND SEALS

The use of facsimile signatures and seals on Customs bonds by the following corporate surety has been approved effective this date:

Lincoln General Insurance Company

Authorized facsimile signatures on file for:

Gary C. Bhojwani, Attorney-in-fact
Michael S. Brown, Attorney-in-fact

The corporate surety has provided the Customs Service with copies of the signatures to be used, a copy of the corporate seal, and a certified copy of the corporate resolution agreeing to be bound by the facsimile signatures and seals. This approval is without prejudice to the surety's right to affix signatures and seals manually.

Dated: July 10, 2000.

LARRY L. BURTON,
Acting Chief,
Entry Procedures and Carriers Branch.

19 CFR Parts 132 and 163

(T.D. 00–49)

RIN 1515–AC55

EXPORT CERTIFICATES FOR SUGAR-CONTAINING PRODUCTS SUBJECT TO TARIFF-RATE QUOTA

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, without change, the interim rule amending the Customs Regulations that was published in the Federal Register on February 4, 2000, as T.D. 00–7. The interim rule set forth the form and manner by which an importer establishes that a valid export certificate is in effect for certain sugar-containing products subject to a tariff-rate quota, that are products of a participating country, as defined in regulations of the United States Trade Representative (USTR). The export certificate is necessary to enable the importer to claim the in-quota rate of duty on the sugar-containing products.

EFFECTIVE DATE: July 14, 2000.

FOR FURTHER INFORMATION CONTACT: Leon Hayward, Office of Field Operations, (202–927–9704).

SUPPLEMENTARY INFORMATION:

BACKGROUND

As a result of the Uruguay Round Agreements, approved by Congress in section 101 of the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465), the President, by Presidential Proclamation No. 6763, established a tariff-rate quota for imported sugar-containing products.

Under a tariff-rate quota, the United States applies one tariff rate, known as the in-quota tariff rate, to imports of a product up to a particular amount, known as the in-quota quantity, and another, higher rate, known as the over-quota rate, to imports of a product in excess of the given amount. The preferential, in-quota tariff rate would be applicable only to the extent that the aggregate in-quota quantity of a product allocated to a country had not been exceeded.

Under Presidential Proclamation No. 7235, dated October 7, 1999, the United States Trade Representative (USTR) was given authority under section 404(a) of the URAA to implement the tariff-rate quota for sugar-containing products to ensure that they do not disrupt the orderly marketing of such products in the United States. The USTR has already assigned Canada an in-quota allocation of the sugar-containing products (64 FR 54719; October 7, 1999).

As part of the implementation of this tariff-rate quota, the USTR has established an export-certificate program under which exporting coun-

tries that have an allocation of the in-quota quantity and that wish to participate in the program may use export certificates for their sugar-containing products that are exported to the United States. The USTR issued regulations for this export-certificate program (15 CFR part 2015) (64 FR 67152; December 1, 1999).

An exporting country wishing to participate in the export-certificate program must notify the USTR and provide the necessary supporting information. As defined in the USTR regulations (15 CFR 2015.2(e)), a participating country is a country that has received an allocation of the in-quota quantity of the tariff-rate quota, and that the USTR has determined, and has so informed Customs, is eligible to use export certificates for their sugar-containing products exported to the United States. The USTR has stated that it intends to publish a notice in the Federal Register whenever a country becomes, or ceases to be, a participating country.

The particular sugar-containing products subject to a tariff-rate quota for which the USTR has established the export-certificate program are described in additional U.S. Note 8 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically, unless excepted as provided in additional U.S. Note 3 to chapter 17, HTSUS, the imported sugar-containing products covered by the export-certificate program contain over 10 percent by dry weight of sugars derived from cane or sugar beets, whether or not mixed with other ingredients, and they are classified under one of the following HTSUS subheadings: 1701.91.54, 1704.90.74, 1806.20.75, 1806.20.95, 1806.90.55, 1901.90.56, 2101.12.54, 2101.20.54, 2106.90.78, or 2106.90.95.

While a country does not need to participate in the export-certificate program in order to receive the in-quota tariff rate for its share of the in-quota quantity, using export certificates assures the exporting country that only those exported sugar-containing products that it intends for the United States market are counted against its in-quota allocation. As already noted, this helps ensure that such products do not disrupt the orderly marketing of sugar-containing products in the United States.

On December 4, 1998, the Governments of the United States and Canada entered into a Record of Understanding regarding Areas of Agricultural Trade. In Annex 17 of this Record of Understanding, the United States agreed to require an export permit issued by the Government of Canada in order to enable an importer to claim the in-quota tariff rate for those sugar-containing products of Canadian origin described in additional U.S. Note 8 to chapter 17, HTSUS. Canada was thus a participating country in this export-certificate program as of January 31, 2000, the effective date of the USTR rule.

In accordance with the rulemaking of the USTR, by a document published in the Federal Register (65 FR 5430) on February 4, 2000, Customs issued an interim rule that added a new § 132.17 to the Customs Regulations (19 CFR 132.17), in order to prescribe the form and man-

ner by which an importer establishes that a valid export certificate exists, including a unique number for the certificate that must be referenced on the entry or withdrawal from warehouse for consumption, whether filed in paper form or electronically. This was intended to ensure that no imports of the specified sugar-containing products of a participating country are counted against the country's in-quota allocation unless the products are covered by a proper export certificate. The export certificate is necessary in this regard in order to enable the importer to claim the in-quota rate of duty on the sugar-containing products.

In addition, the Interim (a)(1)(A) List set forth as an Appendix to part 163, Customs Regulations (19 CFR part 163, Appendix), that lists the records required for the entry of merchandise, was revised to add a reference to the requirement in new § 132.17 that an importer possess a valid export certificate for sugar-containing products that are subject to a tariff-rate quota and that are products of a participating country, in order for the importer to be able to claim the applicable in-quota rate of duty.

Also, § 132.15, Customs Regulations (19 CFR 132.15), was revised to make provision for electronic entry filing in the case of beef subject to a tariff-rate quota, for which the importer must similarly possess a valid export certificate in order to claim the in-quota rate of duty.

No comments were received from the public in response to the interim rule, and Customs has now determined to adopt the interim rule as a final rule without change.

The Regulatory Flexibility Act and Executive Order 12866

As discussed in the interim rule, since the amendments are not subject to the notice and public procedure requirements of the Administrative Procedure Act (5 U.S.C. 553), they are not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Also, because this document involves a foreign affairs function of the United States and implements an international agreement, it is not subject to the provisions of E.O. 12866.

Paperwork Reduction Act

The collections of information involved in this interim rule have already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515–0065 (Entry summary and continuation sheet) and 1515–0214 (General recordkeeping and record production requirements). This rule does not propose any substantive changes to the existing approved information collections.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

LIST OF SUBJECTS

19 CFR Part 132

Agriculture and agricultural products, Customs duties and inspection, Quotas, Reporting and recordkeeping requirements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

Accordingly, the interim rule amending 19 CFR parts 132 and 163, which was published in the Federal Register at 65 FR 5430 on February 4, 2000, is adopted as a final rule without change.

RAYMOND W. KELLY,
Commissioner of Customs.

Approved: June 14, 2000.

JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, July 14, 2000 (65 FR 43689)]

U.S. Customs Service

General Notices

FEE FOR ELECTRONIC FINGERPRINTING

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document announces the fee for fingerprinting at airports at which there is a computerized fingerprint identification system for the use of conducting background checks on airline and airport employees who require unescorted access to Federal Inspection Service areas of an airport. The fee will be $39.00.

EFFECTIVE DATES: July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Linda Slattery, U.S. Customs Service, Office of Field Operations, Passenger Programs, Room 5.4D, 1300 Pennsylvania Avenue, NW, Washington, DC, 20029, Tel. (202) 927–4434.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Customs requires fingerprints to conduct background checks for various reasons. *See*, T.D. 93–18 (58 FR 15770, dated March 24, 1993). In a Federal Register notice published March 3, 1998 (63 FR 10426) Customs announced that the fingerprint fee was $20.70. This fee was for manually conducting fingerprinting on fingerprint cards. The manual processing of fingerprint cards takes an average of four to seven weeks.

Customs is now implementing, at certain airports, a computerized fingerprint identification system for the use of conducting background checks on airline and airport employees who require unescorted access to Federal Inspection Service areas of an airport. This system employs an automated fingerprint reading devise that electronically transmits the fingerprint data directly to the Federal Bureau of Investigation (FBI) where a criminal history background search can be conducted within 24 hours, instead of the four to seven weeks it normally takes to process fingerprint cards. Where implemented, this computerized fingerprinting system will be used in lieu of collecting fingerprints on cards.

The fee for this computerized fingerprinting will be $39.00. This fee is based on Customs recovering the FBI user-fee that is charged to Customs for conducting fingerprint checks and Customs administrative processing costs associated with the collection of fingerprints, which include the compensation and/or expenses of Customs officers performing the fingerprint service and 15% of that amount to cover Customs administrative overhead costs.

Dated: July 5, 2000.

CHARLES W. WINWOOD,
Deputy Commissioner.

[Published in the Federal Register, July 11, 2000 (65 FR 42766)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, July 5, 2000.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED REVOCATION OF A RULING LETTER AND REVOCATION OF TARIFF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN WOMEN'S GARMENTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a tariff classification ruling letter and of treatment relating to the tariff classification of certain women's knit garments.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of certain women's knit garments and revoke any treatment previously accorded by Customs to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before August 25, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Rebecca Hollaway, Textiles Branch, at (202) 927–2394.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057), (hereinafter (Title VI) became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are informod compliance and shared responsibility. These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade communities responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchanise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of certain women's knit garments. Although in this notice Customs is specifically referring to one ruling, New York Ruling Letter (NY) D86889, dated February 22, 1999, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), TariffAct of 1930, as amended, (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third Party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice, may raise a rebuttable presumption of a lack of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY D86889, Customs classified three garments at issue, described in "Attachment A" as outerwear under headings 6110 and 6114 of the Harmonized Tariff Schedule of the United States (HTSUS). It is now

Customs determination that the garments are classifiable as sleepwear in heading 6108, HTSUS, for the reasons set forth in "Attachment B."

Customs intends to revoke NY D86889 and any other ruling not specifically identified, in order to classify this merchandise under heading 6108. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action, we will give consideration to any written comments timely received.

Proposed HQ 962827, revoking NY D86889 is set forth as "Attachment B" to this document.

Dated: June 30, 2000.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rlulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, February 22, 1999.

CLA-2-61:RR:NC:WA:361 D86889
Category: Classification
Tariff No. 6110.20.2075,
6114.20.0010, and 6114.20.0060

MS. ALLISON M. BARON
SHARRETTS, PALEY, CARTER & BLAUVELT, P.C.
67 Broad Street
New York, NY 10004

Re: The tariff classification of four women's knit garments from Korea, the Philippines or Israel.

DEAR MS. BARON:

In your letter dated January 15, 1999, you requested a tariff classification ruling for four women's garments on behalf of Donna Karan Intimates, a division of Wacoal America, Inc. The samples are being returned, as you requested.

Style 446004 is described as a boy-leg brief constructed from 65% cotton, 35% polyester pointelle knit fabric. The garment has a ½ inch elasticized waistband and leg openings that are finished with a one-inch rib knit band.

Style 462004 is a top constructed from 65% cotton, 35% polyester pointelle knit fabric. The top has ¼ inch shoulder straps, one-inch side slits, and a hemmed bottom. The upper edge of the back of the garment is cut straight across, from side seam to side seam.

Style 462003 is a pullover constructed from 65% cotton, 35% polyester pointelle knit fabric with more than nine stitches per two centimeters in the horizontal direction. The pullover has a rib knit V-shaped neckline, short sleeves, one-inch side slits, and a hemmed bottom.

Style 462009 is a pullover constructed from 95% cotton, 5% spandex embroidered knit fabric. The pullover has an elasticized peasant styled neckline, short sleeves, a gathered bodice, and a hemmed bottom.

Although you have stated that these garments are underwear, we believe that they will not be principally used as such in the United States.

The applicable subheading for style 446004 will be 6114.20.0060, Harmonized Tariff Schedule of the United States (HTS), which provides for other garments, knitted, of cotton, women's or girls'. The rate of duty will be 11.2 percent ad valorem.

The applicable subheading for style 462004 will be 6114.20.0010, Harmonized Tariff Schedule of the United States (HTS), which provides for other garments, knitted, of cotton, tops, women's or girls'. The rate of duty will be 11.2 percent ad valorem.

The applicable subheading for styles 462003 and 462009 will be 6110.20.2070, Harmonized Tariff Schedule of the United States (HTS), which provides for pullovers * * * and similar articles, knitted, of cotton, women's or girls'. The rate of duty will be 18.6 percent ad valorem.

Styles 462004, 462003 and 462009 fall within textile category designation 339; style 446004 falls within textile category designation 359. Based upon international textile trade agreements, garments imported from Korea and the Philippines are subject to a visa requirement and quota restraints.

The designated textile and apparel category may be subdivided into part. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report On Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

If you have any questions regarding the ruling, contact National Import Specialist Angela De Gaetano at 212–637–7029.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:TE 962827 RH
Category: Classification
Tariff Nos. 6108.31.0010 and 6108.91.0030

ALLISON M. BARON, ESQ.
SHARRETTS, PALEY, CARTER & BLAUVELT, P.C.
Seventy-five Broad Street
New York, NY 10004

Re: Request for Reconsideration of NY D86889, Women's Underwear; Loungewear; Sleepwear.

DEAR MS. BARON:

This is in reply to your letter of April 27, 1999, requesting reconsideration of New York Ruling Letter D86889, dated February 22, 1999, concerning the classification of certain women's garments. Your request is on behalf of your client, Donna Karan Intimates, a division of Wacoal America, Inc.

Members of my staff met with you and your client on March 10, 2000, to discuss the issues raised in this case.

Facts:

The merchandise at issue consists of three styles of garments, which are described in NY D86889 as follows:

> Style 446004 is described as a boy-leg brief constructed from 65% cotton, 35% polyester pointelle knit fabnic. The garment has a ½ inch elasticized waistband and leg openings that are finished with a one-inch rib knit band.
>
> Style 462004 is a top constructed from 65% cotton, 35% polyester pointelle kruit fabrlic. The top has ¼ inch shoulder straps, one-inch side slits, and a hemmed bottom. The upper edge of the back of the garment is cut straight across, from side seam to side seam.
>
> Style 462003 is a pullover constructed from 65% cotton, 35% polyester pointelle knit fabric with more than nine stitches per two centimeters in the horizontal direction. The pullover has a rib knit V-shaped neckline, short sleeves, one-inch slits, and a hemmed bottom.

You do not contest the classification of style 462009 in NY D86889.

Issue:

Are the garments in question classifiable as outerwear, underwear or sleepwear?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes, taken in their appropriate order.

In past rulings, Customs has stated that the crucial factor in the classification of a garment is the garment itself. As stated by the court in *Mast Industries, Inc. v. United States*, 9 Ct. Int'l Trade 549, 552 (1985), aff'd 786 F.2d 1144 (Ct. of App'ls for Fed. Cir., April 1, 1986), "the merchandise itself may be strong evidence of use". However, when presented with a garment which is ambiguous and not clearly recognizable as sleepwear, underwear, loungewear or outerwear, Customs will look to other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise. It should be noted that Customs considers these factors in totality and no single factor is determinative of classification as each of these factors viewed alone may be flawed. For instance, Customs recognizes that internal documentation and descriptions on invoices may be self-serving as was noted by the court in *Regaliti, Inc. v. United States*, 16 Ct. Int'l Trade 407 (1992).

Consideration of marketing information, and the design and construction details of the garments are instructive in determining whether or not they are principally used as outerwear or underwear. Additional U.S. Rule of Interpretation 1(a), HTSUSA, provides that in the absence of context to the contrary, a tariff classification controlled by use, other than actual use, is to be determined by the principal use in the United States at, or immediately prior to, the date of importation of goods of the same class or kind or merchandise.

In holding, that the garments would not be principally used in the United States as underwear, Customs classified styles 446004 and 462004 in heading 6114, HTSUSA, which provides for other garments, knitted or crocheted. Customs classified style 462003 in heading 61101, HTSUSA, which encompasses sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted.

In support of your claim that the garments are principally used as underwear, you submitted a letter from the President of Donna Karan Intimates and DKNY Underwear Division of Wacoal America, Inc., stating that the styles at issue are considered underwear. The letter reads, in part:

> The styles referenced in this letter are designed to reflect the latest trend in women's foundation garments. However, each garment is also designed to ensure that it will be physically suitable for its intended purpose as a foundation piece to be wom under outerwear garments. For example, none of the subject styles feature snaps or buttons that will interfere with the wearer's outerwear blouse, skirt, or pants. Similarly, while all of these styles feature seams and stitching designed to indicate that these components are "luxury" garments, these same seams are only found in the areas that will enhance, rather than distort, their use as underwear.

Additionally, you submitted a letter from the Nordstrom department store stating that the store purchases all of Wacoal's products for the intimate apparel and sleepwear departments and they are sold to the consumer as intimate apparel and sleepwear.

Notwithstanding the statements of intent to market the garments as underwear, we find that the garments do not support such classification. The garments are not form fitting and it appears they would interfere with the drapability of a garment worn over them. Moreover, your client acknowledged during the meeting that sleepwear buyers in department stores ultimately purchased the garments.

Classification of garments as sleepwear is also based upon use. In Mast, *supra*, the Court of International Trade cited several lexicographic sources, among them *Webster's Third New International Dictionary*, which defined "nightclothes" as "garments to be worn to bed." Customs also refers to the *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88 (1988), for guidance in determining whether a garment has characteristics of sleepwear. At page twenty-four, the *Guidelines* state that "the term 'nightwear' means 'sleepwear' so that certain garments wom in bed in the daytime * * * are included."

In our view, the garments in question are lightweight, loose fitting, extremely soft and sheer and are of the kind principally used as sleepwear in the United States. Thus, they are more specifically provided for as sleepwear in heading 6108 and are not classified as other garments in heading 6114.

Holding:

NY D86889 is REVOKED.

If imported separately, or without a matching component to comprise pajamas, the garments at issue are classifiable as other sleepwear garments in subheading 6108.91.0030, HTSUSA. This provision provides for "Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Other: Of cotton: Other." Goods classified in subheading 6108.91.0030, HTSUSA, are dutiable at the general column one rate of 8.7 percent *ad valorem* and are subject to textile category 350.

If imported in shipments containing equal numbers (pairs) of matching tops and bottoms, the garments will be classified as women's knit pajamas in subheading 6108.31.0010, HTSUSA. This provision provides for "Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Nightdresses and pajamas: Of cotton: Women's." Goods classified in subheading 6108.31.0010, HTSUSA, are dutiable at the general column one rate of 8.7 percent *ad valorem* and are subject to textile category 351.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact the local Customs office prior to importation of this merchandise to determine the current status of any Import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, July 12, 2000.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF THE STARGAZER FACT PACK

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and the revocation of treatment relating to the classification of the Stargazer Fact Pack.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling and to revoke any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of the Stargazer Fact Pack under the Harmonized Tariff Schedule of the United States (HTSUS). Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before August 25, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to: U.S. Customs Service, Office of Regulation and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 927–2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke New York Ruling Letter (NY) E82029, dated June 23, 1999. NY E82029 is set forth as "Attachment A" to this document.

In NY E82029, Customs reasoned that because the articles were, in their condition as imported, designed to function independently from each other and did not comprise a toy set as defined by prior rulings and the Explanatory Notes (ENs) to heading 9503, HTSUS, the articles were separately classifiable under the appropriate subheadings.

Although in this notice Customs is specifically referring to one ruling, NY E82029, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, other than the referenced ruling (see above), should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues

of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY E82029, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 962971 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: July 10, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, June 23, 1999.

CLA–2–49:RR:NC:SP:234 E82029
Category: Classification
Tariff No. 4901.99.0092, 4905.99.0000, 3926.40.0000, 9005.80.4040, 8513.10.2000, 9608.20.0000, 4202.92.4500, 4911.99.6000, 9005.10.0080, 9014.10.9000, and 9208.90.0080

MR. JAMES F. O'HARA
STEIN, SHOSTAK, SHOSTAK & O'HARA
515 South Figueroa Street (Suite 1200)
Los Angeles, CA 90071–3329

Re: The tariff classification of children's activity kits from China.

DEAR MR. O'HARA:

In your letter dated June 4, 1999, you requested a tariff classification ruling on behalf of your client, Walter Foster Publishing, Inc.

Two samples, identified respectively as a "Stargazer Fact Pack" and a "Pathfinder Fact Pack," were submitted and are being returned to you as requested. Each sample consists of a plastic backpack, labeled and tagged for retail sale, containing a number of other articles.

We find that the "Fact Packs" do not qualify for tariff treatment either as "toys put up in sets" (of Chapter 95, HTS) or as "goods put up in sets for retail sale" (as provided for in GRI 3, HTS). Accordingly, the various articles comprising these products will be classified separately. Each item is described below, immediately followed by its applicable subheading, rate of duty and description in the Harmonized Tariff Schedule of the United States (HTS):

STARGAZER FACT PACK

- A 32-page paperbound book ("A First Guide to the Stars") printed with text and illustrations constituting a child's introduction to astronomy. It also includes a few brief references to some of the other components of the Fact Pack. 4901.99.0092/Free (Other printed books containing 5 or more pages each, but not more than 48 pages each.)

- A 16-page paperbound "Stargazer Activity Book" printed with text and diagrams providing guidance in observing the night sky: 4901.99.0092/Free (See HTS description above.)
- A printed paper map of the moon: 4905.99.0000/Free (Other maps * * *, printed.)
- A packet of "star system stick-ons," which are small, luminescent plastic shapes representing stars, planets, comets, etc. They are intended to be decoratively affixed to walls, ceilings and the like by means of separate adhesive bits (included). 3926.40.0000/5.3% (Statuettes and other ornamental articles of plastics.)
- A "planisphere," which is a map of the constellations printed on a paperboard disc with a rotatable plastic overlay: 4905.99.0000/Free (Other maps * * *, printed.)
- A small, simple hand-held telescope: 9005.80.4040/8% (Other optical telescopes.)
- A brightly colored plastic flashlight: 8513.10.2000/12.5% (Flashlights.)
- A felt-tipped pen: 9608.20.0000/4% (Felt tipped and other porous-tipped pens and markers.)
- A backpack, made of vinyl sheeting and having textile straps and trim, which contains all of the above items: 4202.92.4500/20% (Travel, sports and similar bags: with outer surface of sheeting of plastic.)

PATHFINDER FACT PACK

- A 32-page paperbound book ("A First Guide to Mapping") printed with text and illustrations concerning various aspects of maps, the use of a compass, etc. There are also some brief references to other components of the Fact Pack. 4901.99.0092/Free (See HTS description above.)
- A 16-page paperbound "Pathfinder Activity Book" printed with text and diagrams providing practical guidance for creating maps, plans, etc. 4901.99.0092/Free (See HTS description above.)
- A double-sided, plastic-coated paper sheet printed on one surface with a world map and on the other with a fanciful "treasure island" map. 4905.99.0000/Free (Other maps * * *, printed.)
- Two sheets of paper stickers, lithographically printed with place names and symbols, designed for use with the above-described plastic-coated map sheet. 4911.99.6000/0.2% (Other printed matter: printed on paper in whole or in part by a lithographic process.)
- A pair of inexpensive binoculars (plastic housing): 9005.10.0080/Free (Other Binoculars.)
- A simple magnetic compass: 9014.10.9000/2.9% (Other direction finding compasses.)
- A small plastic flashlight: 8513.10.2000/12.5% (Flashlights.)
- A plastic whistle with an attached loop of cord. 9208.90.0080/5.3% (* * * whistles, call horns and other mouth-blown sound signaling instruments.)
- A felt-tipped pen: 9608.20.0000/4% (Felt-tipped and other porous-tipped pens and markers.)
- A backpack, made of vinyl sheeting and having textile straps and trim, which contains all of the above items. 4202.92.4500/20% (Travel, sports and similar bags, with outer surface of sheeting of plastic.)

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Carl Abramowitz at 212–637–7060.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA–2 RR:CR:GC 962971 AML
Category: Classification
Tariff No. 9503.70.00

MR. BRUCE N. SHULMAN
STEIN, SHOSTAK, SHOSTAK & O'HARA, P.C.
Suite 807
1620 L Street, N.W.
Washington, DC 20036–5605

Re: Reconsideration of NY E82029.

DEAR MR. SHULMAN:

This is in response to your letter of July 13, 1999, on behalf of Walter Foster Publishing, Inc., requesting reconsideration of New York Ruling Letter (NY) E82029, dated June 23, 1999, which classified each item of "The Stargazer Fact Pack" individually under the Harmonized Tariff Schedule of the United States (HTSUS). You now seek classification of the merchandise, in its entirety, as a toy of heading 9503, HTSUS, or, in the alternative, as a set where the essential character is provided by the Stargazer Activity Book. A sample was provided for our consideration. In rendering this decision, consideration was given to your arguments presented at a meeting in our office on September 27, 1999, as well as to the supplemental submission dated April 26, 2000. We regret the delay in responding to your request.

Facts:

The instant merchandise is made up of the following items:

1. A 32 page, paperbound booklet ("A First Guide to the Stars") printed with illustrations and text which introduces a child to astronomy and includes references to other articles contained in the pack.
2. A 16 page "Stargazer Activity Book" printed with text and diagrams providing text and diagrams for observing the night sky.
3. A printed map of the moon.
4. A packet of "Star System Stick-ons" which are small, luminescent, plastic shapes molded in the form of planets, stars, comets and the like. Included are small adhesive disks intended to be used to affix the plastic shapes to surfaces.
5. A "planisphere," which is a map of the constellations printed on a paperboard disk with a rotating plastic overlay.
6. One small plastic telescope.
7. One brightly colored plastic flashlight.
8. One felt-tipped pen.
9. A child-sized clear polyvinyl chloride (PVC) backpack which serves as the retail package for the assortment of items.

Issue:

Whether the "Stargazer Fact Pack" is classifiable as toys put up in sets or outfits, as a set put up for retail sale, or according to the classification of each of its components?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

Heading 9503 covers other toys. Although the term "toy," in general, is not specifically defined in the tariff, the ENs to Chapter 95, HTSUS, indicate that "this Chapter covers toys of all kinds whether designed for the amusement of children or adults." It has been Customs position that the amusement requirement means that toys should be designed

and used principally for amusement. See Additional U.S. Rule of Interpretation 1(a), HTSUS.

The ENs for heading 95.03 provide, in pertinent part, that:

> This heading covers:
>
> (A) [a]ll toys not included in headings 95.01 and 95.02.
>
> * * * * * * *
>
> [t]hese include:
>
> * * * * * * *
>
> (17) [e]ducational toys (*e.g.*, toy chemistry, printing, sewing and knitting sets).
>
> * * * * * * *
>
> [c]ertain toys (*e.g.*, electric irons, sewing machines, musical instruments, etc.) may be capable of a limited "use"; but they are generally distinguishable by their size and limited capacity from real sewing machines, etc.
>
> [c]ollections of articles, the individual items of which if presented separately would be classified in other headings in the Nomenclature, are classified in this Chapter when they are put up in a form clearly indicating their use as toys (*e.g.*, instructional toys such as chemistry, sewing, etc., sets).
>
> [c]ertain of the above articles (toy arms, tools, gardening sets, tin soldiers, etc.) are often put up in sets.

The EN to subheading 9503.70, HTSUS, provides, in pertinent part, that:

> Subject to substantiated classification in heading 95.03 and for the purpose of this subheading:
>
> (i) "Sets" are two or more different types of articles (principally for amusement), put up in the same packing for retail sale without repacking. Simple accessories or objects of minor importance intended to facilitate the use of the articles may also be included.
>
> (ii) "Outfits" are two or more different articles put up in the same packing for retail sale without repacking, specific to a particular type of recreation, work, person or profession.

If these goods can be shown to be designed principally for the amusement of children or adults, they may qualify as a set of heading 9503, HTSUS. Upon examination of the individual articles contained in the collection, only one is a toy in its own right. The plastic, handheld telescope is a toy; its principal use, though "capable of a limited 'use,'" is similar to that of an actual telescope. The telescopes "are [] distinguishable by their size and limited capacity from real" telescopes and can be understood to be for looking at celestial bodies (more aptly, imitating that pursuit) as the instruction book indicates (see the EN above). We note that the EN references to collections of articles and outfits allow collections such as these to be classified as toys, *i.e.*, "two or more different articles put up in the same packing for retail sale without repacking, specific to a particular type of recreation, work, person or profession." See the EN to subheading 9503.70, *supra*.

In the tariff context, "amuse" is mainly used in contrast to some utilitarian or functional quality and the focus is not how the toys are used, but whether they are **designed** to amuse. An examination of the Stargazer Fact Pack shows that none of the other categories of merchandise is designed to amuse, but rather they are designed to facilitate some kind of educational activity.

In the most recent ruling cited in support of the claim of classification as "[t]oys, put up in sets or outfits" in subheading 9503.70, HTSUS, the quoted portion speaks to the point that some components may be used independently of the rest in a subheading 9503.70 set without disqualifying the classification. However, integral to that concept is that the articles "typically" are used together to **provide amusement** but also that "[i]t is sufficient that the components of the toy set possess **a clear nexus** which contemplates a **use together** to amuse." HQ 959232, issued June 2, 1998 (emphasis added). Of the articles under consideration here, all function as astronomy guides and are in this way connected to each other. The nexus between the articles is that of a child amusing himself by emulating the adult activity of studying the stars and learning fundamental facts about astronomy. The backpack serves to store and transport the articles, thereby aiding in stargazing on site.

The product under consideration here is a collection of booklets and materials intended to provide an elementary introduction to astronomy. The goods are put up together to make the goods more than the sum of their parts, *i.e.*, an educational toy which, through amusing

activity not unlike a chemistry set, introduces a child to astronomy. The child is amused by emulating an adult activity while gaining knowledge about astronomy. Consequently, they constitute toys put up in sets or outfits within the subheading 9503.70 text and its EN. The goods when imported together are educational when used together than they would when they were imported alone. In other words, a set or outfit is created out of the disparate objects.

We do not reach the question of whether these goods constitute a "GRI 3(b)" set because classification is resolved at GRI 1 by way of GRI 6.

In consequence of the above-described goods being put up in a form clearly indicating their use as toys, forming a set put up for retail sale, they are classifiable as toys put up in sets or outfits for retail sale.

This holding comports with several prior Customs rulings: NY 858364, dated December 13, 1990, in which a toy detective set was classified in subheading 9503.70.80, HTSUS; NY B88271, dated July 28, 1997, in which a "Doring Kindersley Science Kit" was classified in subheading 9503.70.00, HTSUS; NY A87577, dated September 27, 1996, in which, among other things, an "Expedition Camping Set" was classified in subheading 9503.70.00, HTSUS; HQ 083048, dated October 12, 1989, in which a chemistry set was classified under subheading 9503.70.80, HTSUS; HQ 084926, dated September 20, 1989, in which a "Toy Junior Science Set" was classified in subheading 9503.70.80, HTSUS; and HQ 959686, dated March 31, 1998, in which a "Fun with Electronics" set was classified in subheading 9503.70.00, HTSUS.

Holding:

At GRI 6, the contents and container of the "Stargazer Fact Pack" are classifiable in subheading 9503.70.00, HTSUS, as other toys put up in sets or outfits, and parts and accessories thereof.

Effect on Other Rulings:

NY E82029 is **REVOKED**.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF ENZYMATICALLY HYDROLYSED WHEAT PROTEIN PRODUCTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letters and the treatment relating to the classification of enzymatically hydrolysed wheat protein products.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke two rulings, and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of products known as "Novolat 80" and "Propyl 80", and to issue a prospective ruling for a product known as "Solpro 300" under the Harmonized Tariff Schedule of the United States (HTSUS). Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before August 25, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulation and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Norman W. King, General Classification Branch (202) 927–1109.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke rulings pertaining to the tariff classification of enzymatically hydrolyzed wheat protein. Although in this notice Customs is specifically referring to two rulings, New York Ruling Letter's (NYRL) B87801 dated August 13, 1997, and B88094 dated November 24, 1997, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to those identified. No further rulings have been found. This notice will cover any rulings on the merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Cus-

toms intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NYRL B88094 dated November 24, 1997, Attachment A to this document, Customs ruled that a product known as "Propyl 80" was classified in subheading 3824.90.9050, HTSUS, as prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: other. In NYRL B87801 dated August 13, 1997, Attachment B to this document, Customs ruled that a product known as "Novolat 80" was classified as wheat gluten, whether or not dried, to be used as animal feed, in subheading 1109.00.1000, HTSUS.

In considering a request for a prospective ruling under 19 CFR Part 177, for a product known as "Solpro 300", Customs is of the opinion that it is classified as other protein substances and their derivatives, not elsewhere specified or included, in subheading 3504.00.50, HTSUS. Customs is of the further opinion that the products described in NYRL B87801 and B88094 are similar to the product described as "Solpro 300" and are also classified in subheading 3504.00.50, HTSUS. Based on this additional review, Customs intends, pursuant to 19 U.S.C. 1625(c)(1), to revoke NYRL B88094 as set forth in Attachment C of this document (964272), and to revoke NYRL B87801 as set forth as Attachment D of this document (964217) and simultaneously issue a prospective ruling for the product known as Solpro 300 as set forth in Attachment E to this document (963306).

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: July 10, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, November 24, 1997.

CLA–2–38:RR:NC:2:239 B88094
Category: Classification
Tariff No. 3824.90.9050

MR. ROBERT GARDENIER
M.E. DEY & CO.
5007 South Howell Avenue
P.O. Box 37165
Milwaukee, WI 53237–0165

Re: The tariff classification of Propyl 80 from Holland.

DEAR MR. GARDENIER:

In your letter dated July 30, 1997, on behalf of your client Strauss Feed LLC, you requested a tariff classification ruling for Propyl 80 which is an enzymatic hydrolyzed wheat protein. It is composed of 10.5% carbohydrates, 3% fats, 1% ash, and has protein value of 81%.

The applicable subheading will be 3824.90.9050, Harmonized Tariff Schedule of the United States (HTS), which provides for prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: other. The rate of duty will be 5 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Brady at (212) 466–5747.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, August 13, 1997.

CLA–2–11:RR:NC:2:228 B87801
Category: Classification
Tariff No. 1109.00.1000

MR. BASTIAAN VAN DEN BERG
NETHERLANDS CHAMBER OF COMMERCE IN THE US, INC.
4200 Linnean Avenue NW
Washington, DC 20008

Re: The tariff classification of wheat gluten from the Netherlands.

DEAR MR. VAN DEN BERG:

In your letters dated April 17, 1997, and June 30, 1997, you requested a tariff classification ruling.

The sample accompanying your April letter was examined and disposed of. A complete description of the manufacturing process was submitted with your June letter. "Novolat 80" is a tan powder produced by mixing wheat gluten with water, adding a protease enzyme and citric acid, heating, adding a viscosity reducing enzyme, citric acid, and spray drying. The product will be used in the production of animal feed.

The applicable subheading for Novolat 80 will be 1109.00.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for wheat gluten, whether or not dried * * * to be used as animal feed. The rate of duty will be 2.9 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopard at 212–466–5760.

GWENN KLEIN KIRSCHNER,
Chief, Special Products Branch,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 964272K
Category: Classification
Tariff No. 3504.00.50

MR. ROBERT GARDENIER
M.E. DEY & CO.
5007 South Howell Avenue
P.O. Box 37165
Milwaukee, WI 53237–0165

Re: Revocation of New York Ruling Letter (NYRL) B88094; Propyl 80.

DEAR MR. GARDENIER:

In response to your letter dated July 30, 1997, on behalf of Strauss Feed LLC, Customs issued on November 24, 1997, NYRL B88094, concerning the classification of a product described as "Propyl 80" from Holland, which was classified in 3824.90.9050, Harmonized Tariff Schedule of the United States (HTSUS), as prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: other. In the course of reviewing the classification of a similar product, we have determined that NYRL B88094 no longer represents the views of Customs for this product. Our current position follows.

Facts:

In your submission of July 30, 1997, "Propyl 80" is described as an enzymatic hydrolyzed wheat protein composed of 10.5% carbohydrates, 3% fats, 1% ash, and a protein value of 81% that is used as an ingredient in animal milk replacers and veal feeds. Information was not available as to whether the product passes a vitality test (elasticity and plasticity) for vital wheat gluten.

Issue:

Whether "Propyl 80" is classified in heading 1109, HTSUS, as wheat gluten or in heading 3504 as other protein substances and derivatives, not elsewhere specified or included rather then in heading 3824 as other residual products of the chemical or allied industries, not elsewhere specified or included.

Law and Analysis:

The classification of imported merchandise under the HTSUS is governed by the principles set forth in the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section and chapter notes and, unless otherwise required, according to the re-

maining GRI's, taken in their appropriate order. GRI 3(a), also provides, in part, that when goods are *prima facie* classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. Accordingly, we first have to determine whether the articles are classified under GRI 1.

Heading 1109, HTSUS, provides for wheat gluten, whether or not dried. The Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and General Rules of Interpretation of the HTSUS. The EN's to heading 1109, state that

> Gluten is extracted from wheat flour by simple aqueous separation from the other constituents (starch, etc.). It comes in the form of a whitish viscous liquid or paste ("_moist_" gluten) or a cream-coloured powder (dry gluten).
>
> It consists essentially of a mixture of various proteins, the main ones being gliadin and glutenin (which account for 85 to 95 % of the total). The presence of these two proteins is characteristic of wheat gluten, which owes to them its elasticity and plasticity when mixed with water in suitable proportions.
>
> Gluten is used mainly to enrich in proteins flours used in making certain types of bread or biscuits, of macaroni or similar products or of dietetic preparations. It is also used as a binder in certain meat preparations, for the manufacture of certain glues or of products such as gluten sulphate or gluten phosphate, hydrolysed vegetable proteins or sodium glutamate.

The heading excludes, *inter alia*;

> (a) Wheat flour enriched by the addition of gluten (heading 11.01).
> (b) Proteins extracted from wheat gluten (generally heading 35.04).
> (c) Wheat gluten prepared for use as a glue or as a glazing or dressing for the textile industry (heading 35.06 or 38.09).

The EN's, in essence, describe wheat gluten as extracted from wheat and due to its elasticity and plasticity, is used in making bread and similar products. It is also used as a binder in certain meat preparations and in the manufacture of other products such as "hydrolysed vegetable proteins". The EN's indicate that products made with the use of wheat gluten are excluded from the heading. "Hydrolysed vegetable proteins", made with the use of wheat gluten are not covered by heading 1109, and therefore not classified in heading 1109, HTSUS, by virtue of GRI 1.

Heading 3824.90.9050, Harmonized Tariff Schedule of the United States (HTSUS), provides for prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: other.

Heading 3504, HTSUS, provides for peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed. Subheading 3504.00.10, HTSUS, provides for protein isolates and 3504.00.50, HTSUS, provides, in part, for other protein substances and their derivatives, not elsewhere specified or included.

Since "Propyl 80" as described (assuming that it does not pass a vitality test for vital wheat gluten) is not specified or included in heading 1109 or any other heading, it may be classified by virtue of GRI 1 in heading 3824 or 3504, both of which, covers certain products not specified or included elsewhere in the tariff.

As between headings 3504 and 3824, "Propyl 80", a protein substance made with the use of wheat gluten is more specifically described in heading 3504, covering other protein substances and their derivatives.

Holding:

"Propyl 80" (assuming that it does not pass a vitality test for vital wheat gluten) is classified in subheading 3504.00.50, HTSUS as other protein substances and their derivatives, not elsewhere specified or included.

NYRL B88094 dated November 24, 1997, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 964217K
Category: Classification
Tariff No. 3504.00.50

MR. BASTIAAN VAN DEN BERG
INTERNATIONAL TRADE ADVISOR
NETHERLANDS CHAMBER OF COMMERCE IN THE U.S., INC.
4200 Linnean Avenue, NW
Washington, DC 20008

Re: Revocation of New York Ruling Letter (NYRL) B87801; Wheat Gluten; Novolat 80.

DEAR MR. VAN DEN BERG:

In response to your letters on behalf of Hyproca Veghel dated April 17 and June 30, 1997, Customs issued on August 13, 1997, NYRL B87801, concerning the classification of a product described as "Novolat 80" from the Netherlands, which was classified as wheat gluten, whether or not dried, to be used as animal feed, In subheading 1109.00.1000, Harmonized Tariff Schedule of the United States (HTSUS). In the course of reviewing the classification of a similar product, we have determined that NYRL B87801 no longer represents the views of Customs for this product. Our current position follows.

Facts:

"Novolat 80" is described as an enzymatically hydrolysed wheat gluten in powder form containing 80% protein, 10.5% carbohydrates, 1.0% ash, and amino acids and minerals. The flow chart for "Novolat 80" indicates that wheat gluten is mixed with water and during the first reaction, protease enzymes and citric acid are added followed by a heating process. During the second reaction, a viscosity reducing enzyme is added and at the end of the reaction, citric acid is added. The product is then spray dried. The product is stated to be used in the production of animal feed.

Issue:

Whether "Novolat 80" is classified in heading 1109, HTSUS, as wheat gluten or in heading 3504 as other protein substances and derivatives, not elsewhere specified or included.

Law and Analysis:

The classification of imported merchandise under the HTSUS is governed by the principles set forth in the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section and chapter notes and, unless otherwise required, according to the remaining GRI's, taken in their appropriate order. Accordingly, we first have to determine whether the articles are classified under GRI 1.

Heading 1109, HTSUS, provides for wheat gluten, whether or not dried. The Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and General Rules of Interpretation of the HTSUS. The EN's to heading 1109, state that

> Gluten is extracted from wheat flour by simple aqueous separation from the other constituents (starch, etc.). It comes in the form of a whitish viscous liquid or paste ("_moist_" gluten) or a cream-coloured powder (dry gluten).
>
> It consists essentially of a mixture of various proteins, the main ones being gliadin and glutenin (which account for 85 to 95 % of the total). The presence of these two proteins is characteristic of wheat gluten, which owes to them its elasticity and plasticity when mixed with water in suitable proportions. Gluten is used mainly to enrich in proteins flours used in making certain types of bread or biscuits, of macaroni or similar products or of dietetic preparations. It is also used as a binder in certain meat preparations, for the manufacture of certain glues or of products such as gluten sulphate or gluten phosphate, hydrolysed vegetable proteins or sodium glutamate.

The heading excludes, *inter alia*;

(a) Wheat flour enriched by the addition of gluten (heading 11.01).
(b) Proteins extracted from wheat gluten (generally heading 35.04).
(c) Wheat gluten prepared for use as a glue or as a glazing or dressing for the textile industry (heading 35.06 or 38.09).

The EN's, in essence, describe wheat gluten as extracted from wheat and due to its elasticity and plasticity, is used in making bread and similar products. It is also used as a binder in certain meat preparations and in the manufacture of other products such as "hydrolysed vegetable proteins". The EN's indicate that products made with the use of wheat gluten are excluded from the heading. "Hydrolysed vegetable proteins", made with the use of wheat gluten are not covered by heading 1109, and therefore not classified in heading 1109, HTSUS, by virtue of GRI 1.

Heading 3504, HTSUS, provides for peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed. Subheading 3504.00.10, HTSUS, provides for protein isolates and 3504.00.50, HTSUS, provides, in part, for other protein substances and their derivatives, not elsewhere specified or included. Since "Novolat 80" is not specifically classified or included elsewhere in the tariff, and assuming that the product can not pass a vitality test (elasticity and plasticity) for vital wheat gluten, it is classified by virtue of GRI 1, in subheading 3504.00.50, HTSUS.

Holding:

"Novolat 80", as described above, is classified in subheading 3504.00.50, HTSUS, as other protein substances and their derivatives, not elsewhere specified or included.

NYRL B87801 dated August 13, 1997, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963306K
Category: Classification
Tariff No. 3504.00.50

MR. NED A. LARSON
SENIOR ACCOUNT MANAGER
HOOGWEGT U.S., INC.
724 Florsheim Drive
Libertyville, IL 60048–0459

Re: Solpro 300; Enzymatically Hydrolyzed Wheat Protein.

DEAR MR. LARSON:

In your letter dated April 16, 1999, to the Director, Customs National Commodity Specialist Division, New York, you requested a classification ruling under the Harmonized Tariff Schedule of the United States (HTSUS), for a product referred to as "Solpro 300". Your letter was referred to Headquarters for a direct response. We regret the day in not responding earlier on this very complicated matter.

Facts:

The product is known as "Solpro 300" produced in Belgium. The submitted technical literature describes the product as "an enzymatically hydrolysed wheat protein isolate obtained from (wheat) gluten". It is composed of 84% protein (using a factor of 6.25), less than 7% moisture, less than 1.5% ash and 6% total fat content. It is prepared from wet wheat

gluten to which two enzymes, endoprotease and α-amylase, have been added. The mixture is homogenized and heated to a temperature that will cause the enzymes to react with the gluten. The reaction proceeds under controlled conditions and is stopped once the desired product is obtained. The pH of the product is then adjusted with lactic acid. The product is pasteurized, concentrated by evaporation, dried, ground and packaged in 50 pound bags, 25 kilogram bags, one metric ton totes and/or pneumatic bulk tankers.

The literature further describes the product as more soluble which has greater emulsifying properties and is less elastic than the material from which it is derived, wheat gluten. It is used as an ingredient in wet and extruded pet food products.

Customs laboratory report number 2–1999–22408 dated October 6, 1999, reported that the submitted sample did not pass a vitality test (elasticity and plasticity) for vital wheat gluten, and has evidence of hydrolysis.

Issue:

Whether "Solpro 300" is classified in heading 1109, HTSUS, as wheat gluten or in heading 3504 as other protein substances and derivatives, not elsewhere specified or included.

Law and Analysis:

The classification of imported merchandise under the HTSUS is governed by the principles set forth in the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section and chapter notes and, unless otherwise required, according to the remaining GRI's, taken in their appropriate order. Accordingly, we first have to determine whether the articles are classified under GRI 1.

Heading 1109, HTSUS, provides for wheat gluten, whether or not dried. The Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and General Rules of Interpretation of the HTSUS. The EN's to heading 1109, state that

> Gluten is extracted from wheat flour by simple aqueous separation from the other constituents (starch, etc.). It comes in the form of a whitish viscous liquid or paste ("_moist_" gluten) or a cream-coloured powder (dry gluten).
>
> It consists essentially of a mixture of various proteins, the main ones being gliadin and glutenin (which account for 85 to 95 % of the total). The presence of these two proteins is characteristic of wheat gluten, which owes to them its elasticity and plasticity when mixed with water in suitable proportions.
>
> Gluten is used mainly to enrich in proteins flours used in making certain types of bread or biscuits, of macaroni or similar products or of dietetic preparations. It is also used as a binder in certain meat preparations, for the manufacture of certain glues or of products such as gluten sulphate or gluten phosphate, hydrolysed vegetable proteins or sodium glutamate.
>
> The heading excludes, *inter alia*;
>
> (a) Wheat flour enriched by the addition of gluten (heading 11.01).
> (b) Proteins extracted from wheat gluten (generally heading 35.04).
> (c) Wheat gluten prepared for use as a glue or as a glazing or dressing for the textile industry (heading 35.06 or 38.09).

The EN's, in essence, describe wheat gluten as extracted from wheat and due to its elasticity and plasticity, is used in making bread and similar products. It is also used as a binder in certain meat preparations and in the manufacture of other products such as "hydrolysed vegetable proteins". The EN's indicate that products made with the use of wheat gluten are excluded from the heading. "Hydrolysed vegetable proteins", made with the use of wheat gluten are not covered by heading 1109, and therefore not classified in heading 1109, HTSUS, by virtue of GRI 1.

Heading 3504, HTSUS, provides for peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed. Subheading 3504.00.10, HTSUS, provides for protein isolates and 3504.00.50, HTSUS, provides, in part, for other protein substances and their derivatives, not elsewhere specified or included. Since "Solpro 300" is not specifically classified or included elsewhere in the tariff, and noting Customs laboratory report that the sample submitted has been partially enzymatically hydrolysed and has lost its vitality, it is classified by virtue of GRI 1, in subheading 3504.00.50, HTSUS.

Holding:

A product described as "Solpro 300", an enzymatically hydrolysed vegetable protein made with the use of wheat gluten (which does not pass a vitality test for wheat gluten), is classified as other protein substances and their derivatives, not elsewhere specified or included, in subheading 3504.00.50, HTSUS.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF MOTOR VEHICLE STEERING COLUMN SWITCH

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letter and revocation of treatment relating to tariff classification of motor vehicle steering column switch.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling relating to the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of steering column switches, and to revoke any treatment Customs has previously accorded to substantially identical transactions. These articles comprise three separate switches in a common housing, mounted on the column beneath the steering wheel of a motor vehicle. Each switch in the combination controls an individual function within the automobile. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before August 25, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927–0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling relating to the tariff classification of steering column switches. Although in this notice Customs is specifically referring to one ruling, *NY* E81998, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In *NY* E81998, dated June 16, 1999, motor vehicle steering column switches were held to be classifiable in subheading 8708.99.80, HTSUS. This ruling was based on the belief that the article was solely or principally used with motor vehicles, and was not more specifically provided

for elsewhere in the HTSUS. *NY* E81998 is set forth as "Attachment A" to this document.

It is now Customs position that steering column switches are classifiable in subheading 8536.50.90, HTSUS, as other switches. Pursuant to 19 U.S.C. 1625(c)(1)), Customs intends to revoke *NY* E81998, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis in *HQ* 963621, which is set forth as "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: July 7, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, June 16, 1999.

CLA–2–87:RR:NC:MM:101 E81998
Category: Classification
Tariff No. 8708.99.8080

MR. ROBERT J. RESETAR
PORSCHE CARS NORTH AMERICA, INC.
980 Hammond Drive
Suite 1000
Atlanta, GA 30328

Re: The tariff classification of a *Steering Column Switch* from Germany.

DEAR MR. RESETAR:

In your letter dated May 27, 1999 you requested a tariff classification ruling.

You submitted a sample and a diagram from your electronic parts catalog of a Steering Column Switch that is mounted on the steering column, behind the steering wheel. It is a multifunction switch that controls the following:

- Turn signal and high/low headlight switch
- Windshield wiper speed switch: off, low, high, rain sensor setting
- Cruise control: on, off, set, accelerate, decelerate switch.

In addition, there is a cable harness attached to the cruise control switch only. Electrical current for the other switches is conducted via gold plated connectors on the back of the switch unit. The steering column switch is part of a 12 volt DC electrical system.

The applicable subheading for the *Steering Column Switch* will be 8708.99.8080, Harmonized Tariff Schedule of the United States (HTS), which provides for *Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other* * * * *Other*. The rate of duty will be 2.5% ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 212–637–7035.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963621 JAS
Category: Classification
Tariff No. 8536.50.90

MR. ROBERT J. RESETAR
PORSCHE CARS NORTH AMERICA, INC.
980 Hammond Drive, Suite 1000
Atlanta, GA 30328

Re: *NY* E81998 Revoked; Motor Vehicle Steering Column Switch.

DEAR MR. RESETAR:

In *NY* E81998, which the Director of Customs National Commodity Specialist Division, New York, issued to you on June 16, 1999, a motor vehicle steering column switch was held to be classifiable in subheading 8708.99.80, Harmonized Tariff Schedule of the United States (HTSUS), as other parts and accessories of motor vehicles. We have reconsidered this classification and now believe that it is incorrect.

Facts:

The article in question is a 3-in-1 switch mounted on the steering column behind the steering wheel of a motor vehicle. It incorporates a windshield wiper speed switch, a cruise control on/off/setting switch, and a turn signal and high/low headlight switch.

The HTSUS provisions under consideration are as follows:

8536	Electrical apparatus for switching or protecting electrical circuits or for making connections to or in electrical circuits * * * for a voltage not exceeding 1,000 V:
8536.50	Other switches:
8536.50.90	Other
*	* * * * *
8537	* * * other bases, equipped with two or more apparatus of heading 8536 or 8537, for electric control or the distribution of electricity * * *:
8537.10	For a voltage not exceeding 1,000 V:
8537.10.90	Other
*	* * * * * * *
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs):
8708.29	Other:
8708.99.80	Other

Issue:

Whether the steering column switch is an automotive part or accessory or an electrical apparatus of Chapter 85.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings

and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Initially, Section XVI, Note 1(l), HTSUS, excludes articles of Section XVII. Heading 8708, other parts and accessories of motor vehicles, is in Section XVII. But, Section XVII, Note 2(f), HTSUS, excludes from the expressions *"parts"* and *"parts and accessories"* electrical machinery and equipment of Chapter 85. So, the question is whether the steering column switch is described by a provision in Chapter 85.

In your ruling request of May 27, 1999, from which *NY* E81998 resulted, you cited heading 8537 for possible consideration. The ruling, however, contained no discussion of that provision. In *HQ* 963218, dated May 24, 2000, a ruling relating to the classification of power distribution junction boxes, the following discussion appears on the relationship between headings 8536 and 8537:

> From their respective terms, headings 8536 and 8537 are mutually exclusive. Heading 8536 covers *individual* apparatus such as [switches], relays or fuses, or *multiples of one such apparatus*, that are principally used for switching or protecting or for making connections to or in electrical circuits. On the other hand, heading 8537 covers *assemblies* of the apparatus described in heading [8535 and] 8536, for example, combinations of [switches], relays and fuses on a board, panel or other base whose principal use is to control or distribute electricity (Underlining added).

The steering column switch at issue consists of three individual switches joined in a common housing, each of which controls a separate function within the vehicle. This device meets the terms of heading 8536. This conclusion is buttressed by the 8537 ENs on p. 1507 which exclude from that heading simple switch assemblies, such as those consisting of two switches and a connector. The ENs refer such apparatus to heading 8535 or heading 8536. Because the steering column switch is provided for in heading 8536 Section XVII, Note 2(f), HTSUS, eliminates heading 8708 from consideration.

Holding:

Under the authority of GRI 1, the steering column switch is provided for in heading 8536. It is classifiable in subheading 8536.50.90, HTSUS. *NY* E81998 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION AND REVOCATION OF CUSTOMS RULING LETTERS & TREATMENT RELATING TO TARIFF CLASSIFICATION OF KNITTED CAPELETS

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Notice of proposed modification and revocation of tariff classification ruling letters and treatment relating to the classification of knitted capelets.

SUMMARY: Pursuant to Section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke two ruling letters and modify one ruling letter pertaining to the tariff classification of knitted capelets. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before August 25, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Mary Beth Goodman, Textile Branch, (202) 927–1368.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility.**" These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends

to revoke two rulings and modify one ruling pertaining to the classification of knitted capelets. Although in this notice Customs is specifically referring to three rulings, Port Decision ("PD") Letters PD F82821 and PD F82960 and Headquarters Ruling Letter ("HQ") 084247, this notice covers any rulings on this merchandise, which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise Customs during this notice and comment period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of the final decision of this notice.

The subject capelets were originally classified in heading 6102 of the Harmonized Tariff Schedule Annotated ("HTSUSA"), as women's knitted capes and also within heading 6114, HTSUSA, as other knit garments. However, due to the amount of coverage afforded the wearer and the styling of the subject capelets, it is Customs view that the capelets are more properly classified in heading 6117, HTSUSA, as other made up clothing accessories. The items under review are described as capelets which provide coverage to the shoulders, upper back and chest area as well as the upper arms, but do not extend to the abdomen area or waist. The subject merchandise is worn for style and decorative purposes and lacks coverage and other features which would afford the wearer protection from the elements in a manner comparable to the merchandise in heading 6102, HTSUSA. In PD F82821, dated March 1, 2000, concerning the tariff classification of a knitted capelet from Hong Kong and China, the product was erroneously classified under subheading 6102.10.0000, HTSUSA, as a women's knitted cape of wool. In PD F82960, dated February 28, 2000, concerning the tariff classification of a knitted capelet from Hong Kong, the product was erroneously classified under 6102.30.1000, HTSUSA, the provision for a women's knitted cape of man made fibers containing 23 percent or more of wool. In HQ 084247, dated July 28, 1989, concerning the tariff classification of a

knitted capelet from Taiwan, the product was classified under 6114, HTSUSA, as an other knit garment. PD F82821 is set forth as "Attachment A" to this document. PD F82960 is set forth as "Attachment B" to this document. HQ 084247 is set forth as "Attachment C" to this document. The correct classification for these products should be under subheading 6117.10, HTSUSA as an other knit accessory similar to shawls, scarves, mufflers, mantilla, veils and the like.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke PD F82821, PD F82960, and modify HQ 084247 and any other ruling not specifically identified on identical or substantially similar merchandise to reflect the proper classification within the HTSUSA pursuant to the analysis set forth in Proposed Headquarter Rulings ("HQ") 964226 (*see* "Attachment D" to this document); HQ 964225 (*see* "Attachment E" to this document); and HQ 964232 (*see* "Attachment F" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: July 7, 2000.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, March 1, 2000.

CLA–2–61:K:TO:B8:I14 F82821
Category: Classification
Tariff No. 6102.10.0000

MS. STACY L WEINBERG
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN LLP
COUNSELORS AT LAW
245 Park Avenue, 33rd Floor
New York, NY 10167–3397

Re: The tariff classification of a woman's knit capelet from China and Hong Kong.

DEAR MS. WEINBERG:

In your letter dated February 3, 2000, you requested a classification ruling on behalf of American Eagle Outfitter's, Inc., at Blue Star Imports L.P, located at 150 Thornhill Drive, Warrendale, Pennsylvania.

Style number 4708 is a woman's capelet constructed from a 100% wool knit fabric. The garment has a full-front zipper opening, a hood and fringe along the bottom. There are no armholes or sleeves on the garment which extends from the neck to mid-chest in length. The sample is being returned as requested.

The applicable subheading for the garment will be 6102.10.0000, Harmonized Tariff Schedule of the United States, which provides for women's knitted capes of wool The duty rate will be 17.8% ad valorem + 60.9 cents/kilogram.

The garment falls within textile category designation 435. As a product of China, this merchandise is subject to quota and visa requirements based upon international textile trade agreements. As a product of Hong Kong, this merchandise is subject to export license and quota requirements based upon international textile trade agreements.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the tune of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

SUSAN T. MITCHELL,
Area Director,
JFK Airport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Chicago, IL, February 28, 2000.

CLA–2–61:CO:CH:DGD IO5 F82960
Category: Classification
Tariff No. 6102.30.1000

MRS. LISA YORK
SPIEGEL IMPORTS
ASSISTANT IMPORT MANAGER–HQ 7
3500 Lacey Road
Downers Grove, IL 60515

Re: The tariff classification of a women's knitted capelet from Hong Kong.

DEAR MRS. YORK:

In your letter dated February 4, 2000, you requested a tariff classification ruling. Your sample will be returned as you requested.

The submitted sample, style 16–6059s/catalog number 16–6235, is a women's knitted garment which is constructed of 35% acrylic, 32% wool, 32% nylon, 1% spandex. The item, which you refer to as a capelet, has no sleeves or pockets, a funnel neckline, a full five button frontal closure, and a straight edge bottom. It is shaped to conform and cover the shoulders and extends approximately 11 inches below the neckline.

The applicable subheading for Style 16–6059s/catalog 16–6235 will be 6102.30.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' overcoats, carcoats, capes cloaks, anoraks, windbreakers and similar articles, knitted or crocheted: of man-made fibers: other: containing 23 percent or more by weight of wool or fine animal hair. The rate of duty will be 66 cents/kg & 19.3%.

Style 16–6059s/catalog 16–6235 falls within textile category designation 435. Based upon international textile trade agreements, products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at WWW.CUSTOMS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so,

visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

ROBYN DESSAURE,
Port Director,
Chicago, Illinois.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, July 28, 1989.

CLA-2 CO:R:C:G *084247* PR; NY 838583
Category Classification
Tariff No. 6110.10.2080(EN), 6110.30.1560(EN),
6114.10.0070(EN), and 6114.30.3070(EN)

DONALD J. UNGER, ESQUIRE
BARNES, RICHARDSON & COLBURN
200 East Randolph Drive
Chicago, IL 60601

Re: Classification of a Woman's Pullover and "Cape".

DEAR MR. UNGER:

This ruling is in response to your letters of March 21 and 31, 1989, on behalf of Spiegel, Inc., concerning the tariff status of a woman's knit garment and accompanying "cape".

Facts:

The submitted samples are a modified turtle neck long sleeve hip length pullover and a short length pullover which fits over the shoulders but which has no sleeves or armholes. For ease of reference only, the long sleeve pullover will be referred to in this ruling as the pullover and the sleeveless pullover will be referred to as the cape.

The cape, which is shaped to conform to and cover the shoulders, has a straight neckline and a straight bottom that is approximately 10 inches below the neckline. It is made from a 6 x 6 allover knit fabric, which presents a distinctly ribbed effect. The pullover is constructed with a 1 x 1 allover knit fabric that presents a relatively plain knit appearance. It is stated that both articles will, when imported, be 50 percent wool and 50 percent acrylic by weight. The cape is not normally offered for sale separately.

Issue:

The primary issues presented are: (1) Whether the cape is a garment or an accessory? (2) In either event, are the two articles classifiable as composite goods or as sets?

Law and Analysis:

It is contended that the cape is an accessory and not a garment. Therefore, the cape and pullover should be classified as a composite good, classifiable as a single garment under the provision for other sweaters, pullovers, and similar garments, in Subheading 6110.30.1560(EN), Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The rationale for this classification is that the two articles are mutually complementary, practically inseparable, form a whole, and would not normally be sold separately.

The first question that must be resolved is whether the cape is a garment or an accessory. If the former, following General Rule of Interpretation (GRI) 1, HTSUSA, and Note 13, Section XI, HTSUSA, the combination must be broken up for classification purposes and the components classifiable separately. If the latter, and if meeting the requirements under the HTSUSA for either a set or a composite good made up of different components, then, in accordance with GRI 3, HTSUSA, they may be classifiable as a single unit.

The classification of merchandise under the HTSUSA is governed by the General Rules of Interpretation in the order in which they appear. GRI 1 provides generally that for legal purposes, classification shall be determined according to the terms of the headings and any relevant section or chapter notes. In this instance, we believe that we need go no further than GRI I in order to classify the instant merchandise.

Note 13, Section XI, provides that, in the absence of a context to the contrary, "textile garments of different headings are to be classified in their own headings even if put up in sets for retail sale." GRI 6 provides that, for legal purposes, the classification of goods at the subheading levels shall also be governed by the General Rules of Interpretation. Accordingly, if it is determined that the cape is a "garment" and classifiable under a different heading than the pullover, the two garments are required to be classified separately.

In our view, the cape is a garment within the purview of Note 13. We see no real distinction between the cape here at issue and bolero-type tops imported as parts of "two-piece dresses", which, under the predecessor to the HTSUSA, the Tariff Schedules of the United States Annotated (TSUSA), were considered to be separately classifiable garments. While the bolero-type tops may have had armholes, they were usually of the identical fabric and color, formed a whole outfit, and would not normally be either worn or sold separately.

In the instant case, the cape is of a different fabric than its accompanying garment and it does not resemble a real cape, to which it has been likened, except in use. It has a hole in the center through which the head of the wearer is inserted and the article is shaped to fit snugly around the wearer's shoulders. In our view, the lack of armholes does not preclude the cape from being a garment.

Since the two articles are separate garments, it must be determined whether the garments are classifiable under different headings. In this case, while both garments are knit, the pullover is classifiable under Heading 6110, HTSUSA, as a sweater, pullover, or similar article, while the cape, because of limited body coverage and a lack of armholes, is classifiable under Heading 6114, HTSUSA, as an other knitted garment. Since the two garments are classifiable in different headings, Note 13 is applicable and those garments cannot be classified either as a set put up for retail sale or as composite goods.

Even if Note 13 did not apply in this instance, the garments still could not be classifiable as composite goods. The Harmonized Commodity Description and Coding System, Explanatory Notes, which is the official interpretation of the HTSUSA at the (the 4 and 6 digit headings) international level, provide, at page 4, that combinations of components, if separable, may be considered composite goods provided they (1) are adapted to each other; (2) are mutually complementary; and (3) form a whole that would not normally be offered for sale separately.

In this instance, the two garments fail each of the above tests. They are not particularly adapted to each other. Not only can they be worn separately, but, in our view, the long sleeve pullover would have significant wear without the cape. While the garments may be the same color, we do not believe that they are mutually complementary because their fabric is different and the use of one is not dependent on the use of the other. It is true that the cape cannot be worn without another upper body garment, but it is capable of being worn with other garments. Further, we are unaware of what "whole" the combination of garments form when worn together, other than a coordinated outfit. The mere combination of coordinated components which are capable of separate use should not automatically result in the classification of those components as composite goods.

It is indicated that the merchandise will be 50 percent wool and 50 percent acrylic by weight. Pursuant to Section XI Note 2(A), HTSUSA, and Section XI Subheading Note 2, HTSUSA, the garments, will each be classified according to which component predominates by weight. If deemed appropriate, the classifying officer may submit the garments to a Customs laboratory to determine the fiber of chief weight.

Holding:

The pullover is classifiable under the heading for sweaters, pullovers, sweat shirts, and similar articles: If in chief weight of wool, in Subheading 6110.10.2080(EN), HTSUSA, or if in chief weight man-made fibers, in Subheading 6110.30.1560(EN), HTSUSA. In either event, the garment is dutiable, as a product of Taiwan, at the rate of 17 percent ad valorem, and falls within textile restraint category 438.

The cape does not fall within that class of garments which are known commercially either as "capes" or as "tops". Accordingly, it is classifiable under the heading for other knit garments: If in chief weight of wool, in Subheading 6114.10.0070(EN), HTSUSA, with duty, as a product of Taiwan, at the rate of 17 percent ad valorem, and in textile restraint

category 459; or, if in chief weight man-made fibers, in Subheading 6114.30.3070(EN), HTSUSA, with duty at the rate of 30 percent ad valorem, and in textile restraint category 659.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importing the merchandise to determine the current applicability of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:TE 964226 mbg
Category: Classification
Tariff No. 6117.10.1000

MS. STACY L. WEINBERG
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN LLP
COUNSELORS AT LAW
245 Park Avenue, 33rd Floor
New York, NY 10167–3397

Re: Tariff Classification of Knitted Capelet Accessory Made in China and Hong Kong; Revocation of PD F82821.

DEAR MS. WEINBERG:

On March 1, 2000, Customs issued Port Decision ("PD") Letter PD F82821 to your firm, on behalf of your client American Eagle Outfitter's Inc., regarding the tariff classification of a women's knitted capelet. The capelet was originally classified as a women's knitted cape of wool under subheading 6102.10.0000 of the Harmonized Tariff Schedule Annotated ("HTSUSA"). Upon review, Customs has determined that the capelet was erroneously classified. The correct classification for the product should be under subheading 6117.10.1000, HTSUSA, based on classification as a knitted accessory. PD F82821 is hereby revoked for the reasons set forth below.

Facts:

The submitted sample, Style 4708, is a knitted poncho like article designed to be worn by women. The merchandise is composed of 100 percent wool. The item has no sleeves or pockets, a full-front zipper opening, a hood and fringe along the bottom. Since the merchandise is manufactured unsized, the amount of coverage provided will vary depending on the size of the woman wearing the article; however, the article is designed to provide coverage to the shoulders, upper back and chest area as well as the upper arms, but does not extend to the abdomen area or waist. It is designed to be worn over other outerwear such as a blouse or shirt.

Issue:

Whether the subject merchandise is properly classified under heading 6102, HTSUSA, providing for capes, cloaks and similar articles, or whether the appropriate heading is 6117, HTSUSA, as a knitted clothing accessory, or, in the alternative, under heading 6114, HTSUSA, as an other knit garment?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or

Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

There are three competing headings under the HTSUSA which must be considered for classification of the merchandise under consideration: heading 6102 provides for *inter alia* women's knitted or crocheted coats, capes, windbreakers and similar articles; heading 6114, provides for other knitted or crocheted garments; and heading 6117, provides for other knitted or crocheted clothing accessories.

Determination of the HTSUSA classification of the subject merchandise requires an understanding of terminology which is germane to the issue and utilized by the HTSUSA. We note the following definitions:

Shawl	square or oblong piece of material used for shoulder covering and is worn by women; The term also implies any material used for shoulder or head covering in the accepted sense of today. THE MODERN TEXTILE AND APPAREL DICTIONARY, GEORGE E. LINTON 506 (1973).
Cape	sleeveless outer garment of any length hanging loosely from the shoulders; usually covering back, shoulders, arms. THE FASHION DICTIONARY, MARY BROOKS PICKEN 56 (1973).
Capelet	any small cape. DICTIONARY OF FASHION, CHARLOTTE MANKEY CALASIBETTA 90 (1998).
Poncho	(1) fashion item shaped like a square or small oblong blanket with a hole in the center for the head, frequently fringed; (2) utilitarian garment consisting of waterproof fabric with a slash in the center for the head; when worn it was used as a rain cape, when not worn it could be used as a blanket. DICTIONARY OF FASHION AT 446.

Style 4708 is typical of a new line of items which are said to be the hot new fashion item for Fall 2000; however, the merchandise is not typical of those items to which it has been likened such as a poncho, cape or shawl. The merchandise under consideration is styled in such a way that it possesses at least one feature of each of the aforementioned items. Style 4708 has a full front zipper. The length of the subject merchandise is not to or below the waist as is the length in a typical poncho or cape Much like a cape or poncho, the item also has no arms or sleeves; yet it is not intended to be loose fitting as it is cut to be snug around the shoulders. In addition, the size of the item and the amount of coverage provided to the wearer resembles the amount of coverage typically afforded by a shawl in that it does not extend beyond the mid-upper body. However, upon extensive research, Customs has determined that the appropriate term for this merchandise is that of "capelet" which is not defined in the HTSUSA or EN.

In applying the rule of *ejusdem generis* to determine whether an item is embraced within a particular class, the courts have looked to the articles enumerated within that class to ascertain the characteristics they have in common. *Kotake Co., Ltd. v. United States*, 58 Cust. Ct. 196, C.D. 2934 (1967). The class of items classified within heading 6102 is that typical of outer wear such as coats, jackets, and similar articles which provide protection from the weather.

The EN to heading 6102, HTSUSA, state that the provisions of the EN to heading 6101, HTSUSA, apply *mutatis mutandis* to the articles of the heading. The EN to heading 6101 state that the heading covers a category of garments characterized by the fact that they are *generally worn over all other clothing for protection against weather* and specifically include capes and ponchos within this heading. The subject merchandise is worn for style and decorative purposes and lacks coverage and other features which would afford the wearer protection from the elements. The short length of the item is not conducive for providing any warmth below the shoulder or chest area.

Customs views the length of a garment to be sometimes an influential factor in determining how a garment is classified. For instance, if the subject merchandise reached to at least the waist, the classification would not be an issue; most likely all concerned would consider the merchandise to be a poncho within heading 6102, HTSUSA. However, this item only extends at a maximum to approximately twelve inches in length. The short length in conjunction with the lack of protection against the weather precludes classification in heading 6102, HTSUSA.

Therefore, the next issue for determination is whether the capelet should be considered a garment of heading 6114, HTSUSA, or an accessory of heading 6117, HTSUSA. The EN to heading 6114, HTSUSA, state the "heading covers knitted or crocheted garments which are not included more specifically in the preceding headings of th[e] Chapter." While this heading is a basket provision, the garments classifiable in heading 6114 normally are those garments which either provide a greater degree of coverage to the wearer than the subject capelet or could be worn without any other articles of clothing.

The EN to heading 6117, HTSUSA, state that "the heading covers, *inter alia*, shawls, scarves, mufflers, mantillas, veils, *and the like*." (emphasis added.) Although the terms set forth in heading 6117, i.e. shawls, scarves, mantillas, and veils, are not defined in the EN to heading 6117, HTSUSA, we note that these same terms are defined in the EN to heading 6214, HTSUSA. The EN to heading 6214, HTSUSA, states in relevant part:

> (1) **Shawls.** These are usually square, triangular or circular, and large enough to cover the head and shoulders.
> (2) **Scarves and mufflers.** These are usually square or rectangular and are normally worn around the neck.
> (3) **Mantillas.** These are kinds of light shawls or scarves, usually of lace, worn by women over the head and shoulders.

The EN further provides that "the *edges of these articles are usually* hemmed, rolled, bordered or *fringed*." (emphasis added.)

In applying the rule of *ejusdem generis* to determine whether the capelet is embraced within heading 6117, HTSUSA, Customs has looked at the common characteristics of the capelet and the aforementioned articles. (*See Kotake*, 58 Cust. Ct. 196, C.D. 2934.) Style 4708 is intended to be worn in much the same sense as a shawl in that it is to cover the shoulders and to be worn over other garments when the weather would not require a heavier coat or wrap. The new fashion trends have dictated that Style 4708 resemble a pull-over poncho in appearance yet resemble a shawl in length and the amount of elemental protection afforded to the wearer. As such, classification as an accessory in heading 6117, HTSUSA, is appropriate.

While the subject capelet is not *eo nomine* provided for within heading 6117, HTSUSA, the heading does allow for accessories which have a likeness to the articles which are specifically named in the heading. Customs considers the subject capelet to be within the purview of "* * * *and the like*" of subheading 6117.10, HTSUSA. (emphasis added).

Finally, in past rulings Customs has stated that the crucial factor in the classification of merchandise is the merchandise itself. As stated by the court in *Mast Industries, Inc. v. United States*, 9 Ct. Int'l Trade 549, 552 (1985), aff'd 786 F.2d 1144 (CAFC, April 1, 1986), "the merchandise itself may be strong evidence of use". However, when presented with articles which are ambiguous in appearance, Customs will look to other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise. It should be noted that Customs considers these factors in totality and no single factor is determinative of classification as each of these factors viewed alone may be flawed. Moreover, Customs has been informed that other merchandise identical in function and design currently being sold in retail stores, is displayed in the accessory departments.

Holding:

PD F82821 is hereby revoked.

The capelet is properly classified under subheading 6117.10.1000, HTSUSA, which provides for "Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories: Shawls, scarves, mufflers, mantillas, veils and the like: Of wool." The capelet is dutiable at the general column one rate of 9.8 percent *ad valorem*. The textile restraint category is 459.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to time of shipment, *The Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local

Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:TE 964225 mbg
Category: Classification
Tariff No. 6117.10.2010

MRS. LISA YORK
SPEIGEL IMPORTS
ASSISTANT IMPORT MANAGER—HQ 7
3500 Lacey Road
Downers Grove, IL 60515

Re: Tariff Classification of Knitted Capelet Accessory Made in Hong Kong; Revocation of PD F82960.

DEAR MRS. YORK:

On February 28, 2000, Customs issued Port Decision ("PD") Letter PD F82960 to your company, Speigel Imports, regarding the tariff classification of a women's knitted capelet. The capelet was originally classified as a women's knitted cape under subheading 6102.30.1000 of the Harmonized Tariff Schedule Annotated ("HTSUSA"). Upon review, Customs has determined that the capelet was erroneously classified. The correct classification for the product should be under subheading 6117.10.2010, HTSUSA, based on classification as a knitted accessory. PD F82960 is hereby revoked for the reasons set forth below.

Facts:

The submitted sample, Style 16–6059s/catalog number 16–6235, is a knitted poncho like article designed to be worn by women. The merchandise is composed of 35 percent acrylic, 32 percent wool, 32 percent nylon, and 1 percent spandex. The item has no sleeves or pockets, a funnel neckline, a full five button frontal closure and a straight edge bottom. Since the merchandise is manufactured unsized, the amount of coverage provided will vary depending on the size of the woman wearing the article; however, the article is designed to provide coverage to the shoulders, upper back and chest area as well as the upper arms, but does not extend to the abdomen area or waist. It measures approximately 11 inches in length below the neckline. It is designed to be worn over other outerwear such as a blouse or shirt.

Issue:

Whether the subject merchandise is properly classified under heading 6102, HTSUSA, providing for capes, cloaks and similar articles, or whether the appropriate heading is 6117, HTSUSA, as a knitted clothing accessory, or, in the alternative, under heading 6114, HTSUSA, as an other knit garment?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international

level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

There are three competing headings under the HTSUSA which must be considered for classification of the merchandise under consideration: heading 6102 provides for *inter alia* women's knitted or crocheted coats, capes, windbreakers and similar articles; heading 6114, provides for other knitted or crocheted garments; and heading 6117, provides for other knitted or crocheted clothing accessories.

Determination of the HTSUSA classification of the subject merchandise requires an understanding of terminology which is germane to the issue and utilized by the HTSUSA. We note the following definitions:

Shawl	square or oblong piece of material used for shoulder covering and is worn by women; The term also implies any material used for shoulder or head covering in the accepted sense of today. THE MODERN TEXTILE AND APPAREL DICTIONARY, GEORGE E. LINTON 506 (1973).
Cape	sleeveless outer garment of any length hanging loosely from the shoulders; usually covering back, shoulders, arms. THE FASHION DICTIONARY, MARY BROOKS PICKEN 56 (1973).
Capelet	any small cape. DICTIONARY OF FASHION, CHARLOTTE MANKEY CALASIBETTA 90 (1998).
Poncho	(1) fashion item shaped like a square or small oblong blanket with a hole in the center for the head, frequently fringed; (2) utilitarian garment consisting of waterproof fabric with a slash in the center for the head; when worn it was used as a rain cape, when not worn it could be used as a blanket. DICTIONARY OF FASHION AT 446.

Style 16–6059s is typical of a new line of items which are said to be the hot new fashion item for Fall 2000; however, the merchandise is not typical of those items to which it has been likened such as a poncho, cape or shawl. The merchandise under consideration is styled in such a way that it possesses at least one feature of each of the aforementioned items. Style 16–6059s is pulled over the head like a poncho, yet the length is not to or below the waist as is the length in a typical poncho. Much like a cape or poncho, the item also has no arms or sleeves; yet it is not intended to be loose fitting as it is cut to be snug around the shoulders. In addition, the size of the item and the amount of coverage provided to the wearer resembles the amount of coverage typically afforded by a shawl in that it does not extend beyond the mid-upper body. However, upon extensive research, Customs has determined that the appropriate term for this merchandise is that of "capelet" which is not defined in the HTSUSA or EN.

In applying the rule of *ejusdem generis* to determine whether an item is embraced within a particular class, the courts have looked to the articles enumerated within that class to ascertain the characteristics they have in common. *Kotake Co., Ltd. v. United States*, 58 Cust. Ct. 196, C.D. 2934 (1967). The class of items classified within heading 6102 is that typical of outer wear such as coats, jackets, and similar articles which provide protection from the weather.

The EN to heading 6102, HTSUSA, state that the provisions of the EN to heading 6101, HTSUSA, apply *mutatis mutandis* to the articles of the heading. The EN to heading 6101 state that the heading covers a category of garments characterized by the fact that they are *generally worn over all other clothing for protection against weather* and specifically include capes and ponchos within this heading. The subject merchandise is worn for style and decorative purposes and lacks coverage and other features which would afford the wearer protection from the elements. The short length of the item is not conducive for providing any warmth below the shoulder or chest area.

Customs views the length of a garment to be sometimes an influential factor in determining how a garment is classified. For instance, if the subject merchandise reached to at least the waist, the classification would not be an issue; most likely all concerned would consider the merchandise to be a poncho within heading 6102, HTSUSA. However, this item only extends at a maximum to approximately eleven inches in length. The short length in conjunction with the lack of protection against the weather precludes classification in heading 6102, HTSUSA.

Therefore, the next issue for determination is whether the capelet should be considered a garment of heading 6114, HTSUSA, or an accessory of heading 6117, HTSUSA. The EN to heading 6114, HTSUSA, state the "heading covers knitted or crocheted garments which are not included more specifically in the preceding headings of th[e] Chapter." While this

heading is a basket provision, the garments classifiable in heading 6114 normally are those garments which either provide a greater degree of coverage to the wearer than the subject capelet or could be worn without any other articles of clothing.

The EN to heading 6117, HTSUSA, state that "the heading covers, *inter alia*, shawls, scarves, mufflers, mantillas, veils, *and the like*." (emphasis added.) Although the terms set forth in heading 6117, i.e. shawls, scarves, mantillas, and veils, are not defined in the EN to heading 6117, HTSUSA, we note that these same terms are defined in the EN to heading 6214, HTSUSA. The EN to heading 6214, HTSUSA, states in relevant part:

> (1) **Shawls.** These are usually square, triangular or circular, and large enough to cover the head and shoulders.
>
> (2) **Scarves and mufflers.** These are usually square or rectangular and are normally worn around the neck.
>
> (3) **Mantillas.** These are kinds of light shawls or scarves, usually of lace, worn by women over the head and shoulders.

The EN further provides that "the *edges of these articles are usually* hemmed, rolled, bordered or *fringed*." (emphasis added.)

In applying the rule of *ejusdem generis* to determine whether the capelet is embraced within heading 6117, HTSUSA, Customs has looked at the common characteristics of the capelet and the aforementioned articles. (*See Kotake*, 58 Cust. Ct. 196, C.D. 2934.) Style 16–6059s is intended to be worn in much the same sense as a shawl in that it is to cover the shoulders and to be worn over other garments when the weather would not require a heavier coat or wrap. The new fashion trends have dictated that Style 16–6059s resemble a pullover poncho in appearance yet resemble a shawl in length and the amount of elemental protection afforded to the wearer. As such, classification as an accessory in heading 6117, HTSUSA, is appropriate.

While the subject capelet is not *eo nomine* provided for within heading 6117, HTSUSA, the heading does allow for accessories which have a likeness to the articles which are specifically named in the heading. Customs considers the subject capelet to be within the purview of "* * * *and the like*" of subheading 6117.10, HTSUSA. (emphasis added).

Finally, in past rulings Customs has stated that the crucial factor in the classification of merchandise is the merchandise itself. As stated by the court in *Mast Industries, Inc. v. United States*, 9 Ct. Int'l Trade 549, 552 (1985), aff'd 786 F.2d 1144 (CAFC, April 1, 1986), "the merchandise itself may be strong evidence of use". However, when presented with articles which are ambiguous in appearance, Customs will look to other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise. It should be noted that Customs considers these factors in totality and no single factor is determinative of classification as each of these factors viewed alone may be flawed. Customs has been informed that other merchandise identical in function and design currently being sold in retail stores, is displayed in the accessory departments.

Holding:

PD F82960 is hereby revoked.

The capelet is properly classified under subheading 6117.10.2010, HTSUSA, which provides for "Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories: Shawls, scarves, mufflers, mantillas, veils and the like: Of man-made fibers: Containing 23 percent or more by weight of wool or fine animal hair." The capelet is dutiable at the general column one rate of 11.6 percent *ad valorem*. The textile restraint category is 459.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to time of shipment, *The Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local

Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:TE 964232 mbg
Category: Classification
Tariff No. 6117.10.2010

DONALD J. UNGER, ESQ.
BARNES, RICHARDSON, & COLBURN
200 East Randolph Drive
Chicago, IL 60601

Re: Tariff Classification of Knitted Capelet Accessory Made in Taiwan; Modification of HQ 084247.

DEAR MR. UNGER:

On July 28, 1989, Customs issued Headquarters Ruling Letter ("HQ") 084247 to your firm on behalf of your client, Speigel, Inc., regarding the tariff classification of a woman's knit garment and accompanying knitted article under heading 6114 of the Harmonized Tariff Schedule Annotated ("HTSUSA"). Upon review of similar merchandise which was recently considered by Customs for classification, Customs has determined that the subject merchandise is substantially similar and therefore, classification in heading 6114, HTSUSA, was incorrect. The correct classification for the product should be under heading 6117, HTSUSA, based on classification as a knitted accessory. HQ 084247 is hereby modified for the reasons set forth below.

Facts:

HQ 084247 provides in part:

> The submitted samples are a modified turtle neck long sleeve hip length pullover and short length pullover which fits over the shoulders but which has no sleeves or armholes. For ease of reference only, the long sleeve pullover will be referred to in this ruling as the pullover and the sleeveless pullover will be referred to as the cape.
>
> The cape, which is shaped to conform to and cover the shoulders, has a straight neckline and a straight bottom that is approximately 10 inches below the neckline. It is made from a 6 X 6 allover knit fabric, which presents a distinctly ribbed effect. The pullover is constructed with a 1 X 1 allover knit fabric that presents a relatively plain knit appearance. It is stated that both articles will, when imported, be 50 percent wool and 50 percent acrylic by weight. The cape is not normally offered for sale separately.

Only the item described as a "cape" is being reconsidered for purposes of modification and the "pullover" classification and remaining analysis are not subject to reconsideration in this ruling letter.

Issue:

Whether the subject merchandise is properly classified under heading 6102, HTSUSA, providing for capes, cloaks and similar articles, or whether the appropriate heading is 6117, HTSUSA, as a knitted clothing accessory, or, in the alternative, under heading 6114, HTSUSA, as a knit garment?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that the classification of goods shall be determined ac-

cording to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

There are three competing headings under the HTSUSA which must be considered for classification of the merchandise under consideration: heading 6102 provides for *inter alia* women's knitted or crocheted coats, capes, windbreakers and similar articles; heading 6114, provides for other knitted or crocheted garments; and heading 6117, provides for other knitted or crocheted clothing accessories.

Determination of the HTSUSA classification of the subject merchandise requires an understanding of terminology which is germane to the issue and utilized by the HTSUSA. We note the following definitions:

Shawl	square or oblong piece of material used for shoulder covering and is worn by women; The term also implies any material used for shoulder or head covering in the accepted sense of today. THE MODERN TEXTILE AND APPAREL DICTIONARY, GEORGE E. LINTON 506 (1973).
Cape	sleeveless outer garment of any length hanging loosely from the shoulders; usually covering back, shoulders, arms. THE FASHION DICTIONARY, MARY BROOKS PICKEN 56 (1973).
Capelet	any small cape. DICTIONARY OF FASHION, CHARLOTTE MANKEY CALASIBETTA 90 (1998).
Poncho	(1) fashion item shaped like a square or small oblong blanket with a hole in the center for the head, frequently fringed; (2) utilitarian garment consisting of waterproof fabric with a slash in the center for the head; when worn it was used as a rain cape, when not worn it could be used as a blanket. DICTIONARY OF FASHION AT 446.

Customs has revisited HQ 084247 because the "cape" which was classified therein is similar to a new line of items which are said to be the hot new fashion item for Fall 2000. However, the subject merchandise is not typical of those items to which it has been likened such as a poncho, cape or shawl. The merchandise under consideration is styled in such a way that it possesses at least one feature of each of the aforementioned items. The subject merchandise is pulled over the head like a poncho yet the length is not to or below the waist as is the length in a typical poncho. Much like a cape or poncho, the item also has no arms or sleeves; yet it is not intended to be loose fitting as it is cut to be snug around the shoulders. In addition, the size of the item and the amount of coverage provided to the wearer resembles the amount of coverage typically afforded by a shawl in that it does not extend beyond the mid-upper body. However, upon extensive research, Customs has determined that the appropriate term for this merchandise is that of "capelet" which is not defined in the HTSUSA or EN.

In applying the rule of *ejusdem generis* to determine whether an item is embraced within a particular class, the courts have looked to the articles enumerated within that class to ascertain the characteristics they have in common. *Kotake Co., Ltd. v. United States*, 58 Cust. Ct. 196, C.D. 2934 (1967). The class of items classified within heading 6102 is that typical of outer wear such as coats, jackets, and similar articles which provide protection from the weather.

The EN to heading 6102, HTSUSA, state that the provisions of the EN to heading 6101, HTSUSA, apply *mutatis mutandis* to the articles of the heading. The EN to heading 6101 state that the heading covers a category of garments characterized by the fact that they are *generally worn over all other clothing for protection against weather* and specifically include capes and ponchos within this heading. The subject merchandise is worn for style and decorative purposes and lacks coverage and other features which would afford the wearer protection from the elements. The short length of the item is not conducive for providing any warmth below the shoulder or chest area.

Customs views the length of a garment to be sometimes an influential factor in determining how a garment is classified. For instance, if the subject merchandise reached to at least the waist, the classification would not be an issue; most likely all concerned would consider the merchandise to be a poncho within heading 6102, HTSUSA. However, this item only extends at a maximum to approximately ten inches in length. The short length in conjunc-

tion with the lack of protection against the weather precludes classification in heading 6102, HTSUSA.

Therefore, the next issue for determination is whether the capelet should be considered a garment of heading 6114, HTSUSA, or an accessory of heading 6117, HTSUSA. The EN to heading 6114, HTSUSA, state the "heading covers knitted or crocheted garments which are not included more specifically in the preceding headings of th[e] Chapter." While this heading is a basket provision, the garments classifiable in heading 6114 normally are those garments which either provide a greater degree of coverage to the wearer than the subject capelet or could be worn without any other articles of clothing. In HQ 084247, the subject merchandise was likened to "bolero-type tops" imported as parts of "two-piece dresses" because as with those items the merchandise would not be sold or worn separately. However, upon reconsideration Customs has determined that the capelet at issue is akin to a shawl and therefore, classification as a garment would not be appropriate.

The EN to heading 6117, HTSUSA, state that "the heading covers, *inter alia*, shawls, scarves, mufflers, mantillas, veils, *and the like*." (emphasis added.) Although the terms set forth in heading 6117, i.e. shawls, scarves, mantillas, and veils, are not defined in the EN to heading 6117, HTSUSA, we note that these same terms are defined in the EN to heading 6214, HTSUSA. The EN to heading 6214, HTSUSA, states in relevant part:

> (1) **Shawls.** These are usually square, triangular or circular, and large enough to cover the head and shoulders.
> (2) **Scarves and mufflers.** These are usually square or rectangular and are normally worn around the neck.
> (3) **Mantillas.** These are kinds of light shawls or scarves, usually of lace, worn by women over the head and shoulders.

The EN further provides that "the *edges of these articles are usually* hemmed, rolled, bordered or *fringed*." (emphasis added.)

In applying the rule of *ejusdem generis* to determine whether the capelet is embraced within heading 6117, HTSUSA, Customs has looked at the common characteristics of the capelet and the aforementioned articles. (*See Kotake*, 58 Cust. Ct. 196, C.D. 2934.) The subject merchandise is intended to be worn in much the same sense as a shawl in that it is to cover the shoulders and to be worn over other garments when the weather would not require a heavier coat or wrap. Customs believes that the capelet at issue in HQ 084247 is similar to capelets which are the new fashion trend for Fall 2000. The new fashion trends have dictated that the capelets resemble a pull-over poncho in appearance yet resemble a shawl in length and the amount of elemental protection afforded to the wearer. As such, classification as an accessory in heading 6117, HTSUSA, is appropriate.

While the subject capelet is not *eo nomine* provided for within heading 6117, HTSUSA, the heading does allow for accessories which have a likeness to the articles which are specifically named in the heading. Customs considers the subject capelet to be within the purview of "* * * *and the like*" of subheading 6117.10, HTSUSA. (emphasis added).

In past rulings Customs has stated that the crucial factor in the classification of merchandise is the merchandise itself. As stated by the court in *Mast Industries, Inc. v. United States*, 9 Ct. Int'l Trade 549, 552 (1985), aff'd 786 F.2d 1144 (CAFC, April 1, 1986), "the merchandise itself may be strong evidence of use". However, when presented with articles which are ambiguous in appearance, Customs will look to other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise.

Holding:

HQ 084247 is hereby modified to reflect classification of the capelet in heading 6117, HTSUSA.

The capelet is properly classified, if in chief weight of man-made fibers, under subheading 6117.10.2010, HTSUSA, which provides for "Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories: Shawls, scarves, mufflers, mantillas, veils and the like: Of man-made fibers: Containing 23 percent or more by weight of wool or fine animal hair." The capelet is dutiable at the general column one rate of 11.6 percent *ad valorem*. The textile restraint category is 459.

If the capelet is in chief weight of wool, the proper classification is under subheading 6117.10.1000, HTSUSA, which provides for "Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories: Shawls, scarves, mufflers, mantillas, veils and the like: Of wool or fine animal hair." The capelet is

dutiable at the general one column rate of 9.8 percent *ad valorem*. The textile restraint number is 459.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to time of shipment, *The Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE CHEMICAL COMPOUND PRUCALOPRIDE SUCCINATE AND TABLETS CONTAINING PRUCALOPRIDE SUCCINATE AS THE ACTIVE INGREDIENT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of the chemical compound prucalopride succinate and tablets containing prucalopride succinate as the active ingredient.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling, and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of the chemical compound prucalopride succinate and tablets containing prucalopride succinate as the active ingredient, under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocation was published in the CUSTOMS BULLETIN of June 7, 2000, Vol. 34, No. 23. One comment was received that agreed with the revocation.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 25, 2000.

FOR FURTHER INFORMATION CONTACT: Michael McManus, General Classification Branch, Office of Regulations and Rulings (202) 927–2326.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility.**" These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

In NY D83726, Customs ruled that the chemical compound prucalopride succinate was classified in subheading 2934.90.39, HTSUS, the residual provision for aromatic "other" heterocyclic compounds, and that tablets containing prucalopride succinate as the active ingredient were classified in subheading 3824.90.50, HTSUS, the ultimate residual provision for preparations of the chemical or allied industries not elsewhere specified or included. After review and consideration of this matter, we are of the opinion that the chemical compound prucalopride succinate is classified in subheading 2934.90.30, as a drug and that tablets containing prucalopride succinate as their active ingredient are classified in subheading 3004.90.90, HTSUS, as "other" medicaments.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY D83726, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 962562 (*see* "Attachment" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

As stated in the proposed notice, this revocation will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to sub-

stantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Dated: July 10, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 10, 2000.

CLA–2 RR:CR:GC 962562 MGM
Category: Classification
Tariff No. 2934.90.30 and 3004.90.90

MR. ROBERT J. LEO
MEEKS & SHEPPARD
330 Madison Avenue
39th Floor
New York, NY 10017

Re: Prucalopride Succinate; Reconsideration of NY D83726.

DEAR MR. LEO:

This is in response to your letter of February 3, 1999, in which you request reconsideration of New York Ruling Letter (NY) D83726, issued to you by the Customs National Commodity Specialist Division. That ruling concerns the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of two types of merchandise: 1) prucalopride succinate imported in bulk and 2) tablets, suitable for administration to humans, that contain prucalopride succinate along with several pharmaceutically inactive ingredients. NY D83726 held that prucalopride succinate imported in bulk was classified in subheading 2934.90.39, HTSUS, as an aromatic heterocyclic compound other than pesticides, photographic chemicals or drugs. That ruling also held that tablets which contain prucalopride succinate were classified in subheading 3824.90.90, HTSUS, the ultimate residual provision for preparations of the chemical or allied industries. You seek classification of prucalopride succinate imported in bulk in subheading 2934.90.39, HTSUS, as an aromatic heterocyclic drug and classification of tablets containing prucalopride succinate in subheading 3004.90.90, HTSUS, the residual provision for medicaments put up in dosage form.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of NY D83726 was published on June 7, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 23. One comment was received that agreed with the revocation.

Facts:

The classification of two types of merchandise is at issue: 1) prucalopride succinate (also known as prucalopride butanedioate) imported in bulk and 2) tablets, suitable for administration to humans, that contain prucalopride succinate along with several pharmaceutically inactive ingredients. Prucalopride succinate is registered with the Chemical Abstract Service (CAS) under the number 179474–85–2, and has the chemical formula $C_{18}H_{26}ClN_3O_3 \cdot C_4H_6O_4$. It has the chemical name "4-amino-5-chloro-2,3-dihydro-N-[1-(3-methoxypropyl)-4-piperdinyl]-7-benzofurancarboxamide butanedioate (1:1)."

Prucalopride succinate is a medicinal compound which the protestant intends to be used in the treatment of chronic idiopathic constipation. As of the time your request for reconsideration of NY D83726, prucalopride succinate was in Phase III of clinical trials required by the Food and Drug Administration (FDA).

Issue:

Is prucalopride succinate, imported in bulk for FDA clinical trials, a "drug" as that term is used in Chapter 29, HTSUS?

Is prucalopride succinate, mixed with certain pharmaceutically inactive ingredients, put up in dosage form for FDA clinical trials, a "medicament" of heading 3004, HTSUS?

Law and Analysis:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See*, T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

NY D83726 classified prucalopride succinate, in bulk form, in subheading 2934.90.39, HTSUS. This provision provides as follows:

2934	Nucleic acids and their salts; other heterocyclic compounds:
2934.90	Other
	Aromatic or modified aromatic:
	Other
	Pesticides
2934.90.20	Photographic chemicals
2934.90.30	Drugs
	Other
2934.90.39	Products described in additional U.S. note 3 to section VI
2934.90.44	Other

Prucalopride contains both benzofuran and piperidine structures. Compounds which contain benzofuran structures typically fall within heading 2932, HTSUS, as heterocyclic compounds with oxygen hetero-atoms only, while compounds containing piperidine structures are typically classified within heading 2933, HTSUS as heterocyclic compounds with nitrogen hetero-atoms only. Thus one might initially infer that prucalopride should be classified in heading 2933 by operation of Note 3, Ch. 29 (which directs that compounds which could be included in either of two headings are to be classified in the latter heading). However, the presence of the oxygen hetero-atom in benzofuran excludes prucalopride from

heading 2933; similarly the nitrogen hetero-atom in piperidine excludes this compound from heading 2932. Thus prucalopride falls to heading 2934 as an "other heterocyclic compound[ ]."

Within heading 2934, you argue that prucalopride succinate is a drug and should therefore be classified in subheading 2934.90.30, HTSUS. In the May 24, 2000, CUSTOMS BULLETIN, Vol. 34, No. 21, Customs published a document entitled "Guidance Concerning the Tariff Classification of Pharmaceutical Products Imported for Clinical Research." There, Customs announced its intention to classify organic compounds, imported in bulk, for use in Phase II or Phase III of clinical trials described in 21 CFR 312.21 as "drugs" of Chapter 29, HTSUS. Here, prucalopride succinate is in Phase III of the clinical trial process. It is administered to patients suffering from a specific ailment (chronic idiopathic constipation), so as to relieve such condition. Thus it is used as a medicine and should be classified as a drug.

In addition to your position that prucalopride succinate is a drug, you also maintain that tablets containing prucalopride succinate, along with certain pharmaceutically inactive ingredients, are medicaments of heading 3004, HTSUS, rather than preparations of the chemical or allied industries of heading 3824, HTSUS.

Heading 3824 provides for, among other things, "* * * chemical products and preparations of the chemical or allied industries * * * not elsewhere specified or included * * *." Thus, if a chemical preparation is described by any other heading of the tariff, it is excluded from heading 3824. Heading 3004 provides for the following:

> 3004 Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.

In the "Guidance Concerning the Tariff Classification of Pharmaceutical Products Imported for Clinical Research," referred to above, Customs announced its intention to classify pharmaceutical products, put up in dosage form, which are imported for use in any stage of clinical trials as "medicaments" of heading 3004, HTSUS. Here, the tablets containing prucalopride were imported for use in Phase III clinical trials, thus they fall within heading 3004. Within heading 3004, HTSUS, prucalopride succinate is classified under subheading 3004.90.9050, HTSUS (Annotated), as a laxative.

It is noted that Prucalopride was added to Table 1 of the Pharmaceutical Appendix on July 1, 1999. *Presidential Proclamation 7207*, July 1, 1999, 64 Fed. Reg. 36549. It is further noted that "succinate" is included in Table 2 of the Pharmaceutical Appendix, which lists prefixes and suffixes representing chemical moieties which do not act to exclude a compound, otherwise included, from the Pharmaceutical Appendix. General Note 13, HTSUS, provides that whenever a rate of duty of "Free" followed by the symbol "K" in parentheses appears in the "Special" subcolumn for a subheading, any product classifiable in such provision shall be entered free of duty, provided that such product is included in the Pharmaceutical Appendix to the tariff schedule. Thus prucalopride succinate, unmixed with other compounds, entered after July 1, 1999, may be entitled to duty-free entry.

Holding:

Prucalopride succinate imported in bulk for Phase III of FDA clinical trials is classified in subheading 2934.90.30, HTSUS. Tablets containing prucalopride succinate along with several pharmaceutically inactive ingredients imported for Phase III of FDA clinical trials are classified in subheading 3004.90.90, HTSUS.

NY D83726 dated December 2, 1998, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF CUSTOMS RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF PINZGAUER MOTOR VEHICLES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to the classification of Pinzgauer motor vehicles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of Steyr-Daimler-Puch Fahrzeugtechnik Company, Pinzgauer models 710M and 712M, and is revoking any treatment previously accorded by the Customs Service to substantially identical transactions, under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocation was published on May 31, 2000, in Vol. 34, No. 22, of the CUSTOMS BULLETIN. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 25, 2000.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Bornstein, General Classification Branch: (202) 927–2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on May 31, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 22, proposing to revoke one ruling, *NY* F83367, dated February 22, 2000, and revoke the tariff treatment pertaining to the tariff classification of Steyr-Daimler-Puch Fahrzeugtechnik Company, Pinzgauer motor vehicles, models 710M and 712M. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to have advised the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY F83367, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 964046. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. HQ 964046, revoking *NY* F83367, and revoking its treatment relating to tariff classification, is set forth as the "Attachment" to this document.

Dated: July 3, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, July 3, 2000.

CLA–2 RR:CR:GC 964046 BJB
Category: Classification
Tariff No. 8702.90.60

MR. WILLY BERCHTOLD
MAGNUM TRUCKS LLC
904 North Garland Avenue
Fayetteville, AR 72701

Re: NY F83367 Revoked; Pinzgauer motor vehicles; passengers; models 710M and 712M.

DEAR MR. BERCHTOLD:

This is in reference to NY F83367, which the Director of Customs National Commodity Specialist Division, New York, issued to you on February 22, 2000. This ruling concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of "Pinzgauer" trucks (models 710M and 712M), manufactured by the Steyr-Daimler-Puch Fahrzeugtechnik Company.

We have reviewed the decision in NY F83367 and have determined that the classification of these two models is in error. This ruling revokes *NY* F83367.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(1)), by section 623 of Title VI, a notice was published on May 31, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 22, proposing to revoke one ruling, *NY* F83367, dated February 22, 2000, and revoke the tariff treatment pertaining to the tariff classification of Pinzgauer motor vehicles. No comments were received in response to this notice.

Facts:

The articles in question are motor vehicles manufactured by the Steyr-Daimler-Puch Fahrzeugtechnik Company of Austria, models 710M and 712M. The motor vehicles are trucks. Model 710M ("710M"), a 4x4, carries 10 passengers, including driver. Model 712M ("712M"), a 6x6, carries 14 passengers, including driver. Both trucks have two bucket seats located in the front cab (one for the driver and one for an additional passenger). These trucks have been used by the Swiss military for the transport of persons over mountainous terrain. You stated that the vehicles are intended for recreational use such as camping, hunting, "off-roading," or as a military collector's vehicle.

Both models 710M and 712M have the following features:

- 2.5 liter, gasoline, 4-cylinder, air cooled, 90 hp spark-ignition engines;
- five forward gear transmission;
- seatbelts for only the front two passengers;
- non-removable bench seats;
- vehicle-wide heating for all passengers (no air conditioning);
- no storage compartment under the bench seats (although gear may be stored there); and
- auxiliary lighting.

The back section has parallel bench seats along the length of the compartment. These bench seats have padded backrests and seats for passenger comfort. The benches on both sides may be folded down to provide a secondary platform surface which spans the length of the compartment and most of its width.

Both the 710M and the 712M are rear wheel driven. Four wheel drive may be engaged on both units, and 6 wheel drive may be engaged on the 6x6 712 M.

Issue:

Whether the Pinzgauer motor vehicles, models 710M and 712M, are provided for under heading 8702, HTSUS, as motor vehicles for the transport of ten or more persons; under heading 8703, HTSUS, as motor vehicles principally designed for the transport of persons; or under heading 8704, HTSUS, which describes motor vehicles for the transport of goods.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). Under GRI 1, HTSUS, goods are to be classified according to the

terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. *See* T.D. 98–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS headings and subheadings under consideration are as follows:

8702	Motor vehicles for the transport of ten or more persons, including the driver:
* * * * * * *	
8702.90	Other
8702.90.60	Other
* * * * * * *	
8703	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars:
* * * * * * *	
8704	Motor vehicles for the transport of goods:
* * * * * * *	

In *NY* F83367, the subject vehicles were held to be classifiable under heading 8703, HTSUS, based upon the mistaken understanding that the models 710M and 712M were "principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars[.]" In fact, at least 10 passengers, including the driver, may be carried in these vehicles.

Models 710M and 712M are provided for at heading 8702, HTSUS. The express language of heading 8702 provides for a motor vehicle with a capacity to transport ten or more persons including the driver. The fact that the subject vehicles can transport at least 10 passengers has been corroborated by documentation available in the public domain on several Internet websites. Insofar as the models 710M and 712M are provided for in heading 8702, HTSUS, they are not provided for in heading 8703, HTSUS. Specifically, the language in heading 8703 stipulates that vehicles classifiable there, must be, "other than those of heading 8702 * * *."

The vehicles may be used for the transport of passengers or goods. However, if they are used for passengers, little room is left for cargo. The floor area located in the back sections of the models 710M and 712M is narrowly configured, thus limiting the quantity of goods that might be carried. When configured for transporting goods, the load platform for goods consists of using the backs of the seats. This is, however, a "secondary platform" other than the actual floor of the vehicles, but similar to situations in which the backs of seats in station wagons are used to transport goods. Further, in both the models 710M and 712M, much of the space located underneath the "secondary platform" area is blocked by the presence of the backrests, thereby further curtailing cargo storage space. Therefore, we conclude that the vehicles are principally designed for the transport of persons.

This ruling applies to Pinzgauer models 710M and 712M only. Other model vehicles exist and should be classified on a case-by-case basis according to their design characteristics.

Holding:

Under the authority of GRI 1, the Pinzgauer trucks, models 710M and 712M are provided for in heading 8702, HTSUS. They are classifiable in subheading 8702.90.60, HTSUS, which provides for "[m]otor vehicles for the transport of ten or more persons, including the driver: * * * Other * * * Other."

NY F83367, dated February 22, 2000, is REVOKED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF CARBON STEEL LUG BASE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letters and treatment relating to tariff classification of carbon steel lug base.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking two rulings relating to the tariff classification of carbon steel lug bases, and revoking any treatment Customs has previously accorded to substantially identical transactions. Notice of the proposed revocation was published on June 7, 2000, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 25, 2000.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927–0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to Customs obligations, a notice was published on June 7, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 23, proposing to

revoke *NY* E86915 and *NY* E86936, both dated September 30, 1999, which classified carbon steel lug bases as flat-rolled products of iron or nonalloy steel, in subheading 7211.23.20, Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking *NY* E86915 and *NY* E86936 to reflect the proper classification of carbon steel lug bases in subheading 7215.50.00, HTSUS, as other bars and rods of iron or nonalloy steel, pursuant to the analysis inb *HQ* 963307 which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment it previously accorded to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: July 10, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 10, 2000.
CLA–2 RR:CR:GC 963307 JAS
Category: Classification
Tariff No. 7215.50.00

STEPHEN P. DEEM
CONTROL DEVICES, INC.
228 Northeast Road
Standish, ME 04084–6149

Re: *NY* E86915 and *NY* E86936 Revoked; Carbon Steel Lug Base.

DEAR MR. DEEM:

In *NY* E86915 and *NY* E86936, which the Director of Customs National Commodity Specialist Division, New York, issued to you on September 30, 1999, two models of a carbon steel lug base were held to be classifiable in subheading 7211.23.20, Harmonized Tariff Schedule of the United States (HTSUS), as flat-rolled products of iron or nonalloy steel.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of these rulings was published on June 7, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 23. No comments were received in response to that notice.

Facts:

The articles at issue are lug bases of cold rolled grade 1018 carbon steel. Both are cut from 12-foot long flat bar stock and measure 0.75 inch wide and 3/16 inch thick. The lug base in *NY* E86915 is 0.91 inch long and is designated item # 880105–313, while the lug base in *NY* E86936 is 0.812 inch long and is designated item # 880105–310 for car testing. These articles will be used, after importation, as components of a safety dummy.

The HTSUS provisions under consideration are as follows:

7211	Flat-rolled products of iron or nonalloy steel, of a width of less than 600mm, not clad, plated or coated:
	Not further worked than cold-rolled (cold-reduced):
7211.23	Containing by weight less than 0.25 percent of carbon:
	Of a width of less than 300 mm:
7211.23.20	Of a thickness exceeding 1.25 mm, other
* * * * * * *	
7215	Other bars and rods of iron or nonalloy steel:
7215.50.00	Other, not further worked than cold-formed or cold-finished

Issue:

Whether the steel lug bases are flat-rolled products for tariff purposes.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Chapter 72, Note 1(k), HTSUS, defines the term *flat-rolled products* in part to include rolled products of solid rectangular (other than square) cross section, which do not conform to the definition of *semifinished products* in the form of straight lengths, which if of a thickness less than 4.75 mm are of a width measuring at least 10 times the thickness or if of a thickness of 4.75 mm or more are of a width which exceeds 150 mm and measures at least twice the thickness. Chapter 72, Note 1(m), HTSUS, defines the term *Other bars and rods* in part to include products which do not conform to the definition in Note 1(k) or to the definition of wire, which have a uniform solid cross section along their whole length in the shape of rectangles (including squares).

Because of their width and thickness, neither item # 880105–310 nor item # 880105–313 meet the dimensional requirements of Chapter 72, Note 1(k), HTSUS. Both, however, conform to the requirements of Note 1(m), HTSUS.

Holding:

Under the authority of GRI 1, the steel lug bases designated items 880105–310 and 880105–313 are provided for in heading 7215. They are classifiable in subheading 7215.50.00, HTSUS.

Effect on Other Rulings:

NY E86915 and *NY* E86936, both dated September 30, 1999, are revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF Y-TYPE STRAINERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letters and treatment relating to tariff classification of Y-type strainers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking two rulings relating to the tariff classification of Y-type strainers, and revoking any treatment Customs has previously accorded to substantially identical transactions. Notice of the proposed revocation of these rulings was published on June 7, 2000, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 25, 2000.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927–0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely in-

formed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to Customs obligations, a notice was published on June 7, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 23, proposing to revoke *NY* B81286, dated January 30, 1997, and *NY* B81839, dated February 7, 1997, both dealing with "Y" strainers used to trap contaminants in commercial water and steam lines. The first ruling classified the merchandise in subheading 7325.99.10, Harmonized Tariff Schedule of the United States (HTSUS), as other cast articles of iron or steel. The second ruling classified the merchandise in subheading 7326.90.85, HTSUS, as other articles of iron or steel. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking *NY* B81286 and *NY* B81839 to reflect the proper classification of Y-type strainers in subheading 8421.29.00, HTSUS, as other filtering and purifying machinery and apparatus for liquids, pursuant to the analysis in *HQ* 963308 and *HQ* 964174, which are set forth, respectively, as the Attach-

ments to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment it previously accorded to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: July 10, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 10, 2000.

CLA–2 RR:CR:GC 963308 JAS
Category: Classification
Tariff No. 8421.29.00

MR. FRED MARTINELLI
FM ASSOCIATES
6 Tootin Hill Road
West Simsbury, CT 06092

Re: *NY* B81286 Revoked; "Y" Strainer.

DEAR MR. MARTINELLI:

In *NY* B81286, which the Director of Customs National Commodity Specialist Division, New York, issued to you on January 30, 1997, a "Y" strainer was held to be classifiable in subheading 7325.99.10, Harmonized Tariff Schedule of the United States (HTSUS), as an other cast article of iron or steel.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of *NY* B81286 was published on June 7, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 23. No comments were received in response to that notice.

Facts:

The "Y" strainer was described as a Y-shaped industrial grade cast iron strainer, model F1, class 125. It consists of a cast iron body, cast iron plug, stainless steel screen and gasket. These articles are said to be used in commercial and industrial liquid systems to strain out debris. No further description was provided.

The HTSUS provisions under consideration are as follows:

7325	Other cast articles of iron or steel:
7325.99	Other:
7325.99.10	Of cast iron
* * *	* * * * * * *
8421	* * * filtering or purifying machinery and apparatus, for liquids or gases: parts thereof:
	Filtering or purifying machinery and apparatus for liquids:
8421.29.00	Other

Issue:

Whether the "Y" strainer is a good of heading 8421.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. Though not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System. Customs believes the ENs should always be consulted. *See* T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Initially, heading 7325 covers all cast articles of iron or steel that are not specified or included elsewhere in the HTSUS. The "Y" strainer at issue contains a body and plug, both of cast iron, but also a screening element of stainless steel. It is our opinion that because the "Y" strainer contains a significant component that is not of cast iron, heading 7325 does not describe this article.

Heading 8421, on the other hand, covers filtering or purifying machinery and apparatus for liquids and for gases. The heading covers filters and purifiers of all types. The ENs on p.1280 state that much of the filtration or purification plant of heading 8421 is purely static equipment with no moving parts. Liquid filters of heading 8421 separate solid, fatty, colloidal, etc., particles from a liquid, for example, by passing it through a sheet, membrane or mass of porous material (e.g., cloth, felt, wire-cloth, skin). The ENs state the heading does not include filter funnels, milk strainers, vessels, tanks, etc., simply equipped with metallic gauze or other straining material, nor general purpose vessels, tanks, etc., even if intended for use as filters after insertion of a layer of gravel, sand, charcoal, etc. The "Y" strainer at issue meets the heading 8421 EN description for filtering or purifying machinery and apparatus for liquids. However, the strainer is not akin to filter funnels and milk strainers or does it appear to be akin to general purpose vessels and tanks intended for use as filters, all of the type which the EN excludes from heading 8421. Substantially similar Y-type strainers have been classified in subheading 8421.29.00, HTSUS. *See NY* A89761, dated March 4, 1997.

Holding:

Under the authority of GRI 1, the "Y" strainer, model F1, class 125, is provided for in heading 8421. It is classifiable in subheading 8421.29.00, HTSUS.

Effect on Other Rulings:

NY B81286, dated January 30, 1997, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 10, 2000.
CLA–2 RR:CR:GC 964174 JAS
Category: Classification
Tariff No. 8421.29.00

MR. PAUL F. HEISS
IBCC INDUSTRIES, INC.
3200 S. Third Street
Milwaukee, WI 53207

Re: *NY* B81839 Revoked; "Y" Strainer.

DEAR MR. HEISS:

In *NY* B81839, which the Director of Customs National Commodity Specialist Division, New York, issued to you on February 7, 1997, a "Y" strainer, a product of the People's Re-

public of China, was held to be classifiable in subheading 7326.90.85, Harmonized Tariff Schedule of the United States (HTSUS), as an other article of iron or steel.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of *NY* B81839 was published on June 7, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 23. No comments were received in response to that notice.

Facts:

The "Y" strainer was described as threaded articles ranging from ½ inch to 3 inches in thickness, and consisting of a body, cover and plug, all of stainless steel. "Y" strainers are designed to be screwed to a standard screen and placed on high pressure water and steam lines to trap contaminants. No further description was provided.

The HTSUS provisions under consideration are as follows:

7326	Other articles of iron or steel:
7326.90	Other:
	Other:
7326.90.85	Other
*	* * * * * * *
8421	* * * filtering or purifying machinery and apparatus, for liquids or gases: parts thereof:
	Filtering or purifying machinery and apparatus for liquids:
8421.29.00	Other

Issue:

Whether the "Y" strainer is a good of heading 8421.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. Though not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System. Customs believes the ENs should always be consulted. *See* T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Initially, the ENs on p. 1126 state that heading 7326 covers all articles of iron or steel produced by a variety of specified operations, other than articles covered in the preceding headings of Chapter 73, or excluded by an applicable legal note, or more specifically covered elsewhere in the HTSUS. Heading 8421, on the other hand, covers filtering or purifying machinery and apparatus for liquids and for gases. The heading covers filters and purifiers of all types. The ENs on p.1280 state that much of the filtration or purification plant of heading 8421 is purely static equipment with no moving parts. Liquid filters of heading 8421 separate solid, fatty, colloidal, etc., particles from a liquid, for example, by passing it through a sheet, membrane or mass of porous material (e.g., cloth, felt, wire-cloth, skin). The ENs state the heading does not include filter funnels, milk strainers, vessels, tanks, etc., simply equipped with metallic gauze or other straining material, nor general purpose vessels, tanks, etc., even if intended for use as filters after insertion of a layer of gravel, sand, charcoal, etc. The "Y" strainer at issue meets the heading 8421 EN description for filtering or purifying machinery and apparatus for liquids. However, the strainer is not akin to filter funnels and milk strainers nor does it appear to be akin to general purpose vessels and tanks intended for use as filters, all of the type which the EN excludes from heading 8421. Substantially similar Y-type strainers have been classified in subheading 8421.29.00, HTSUS. *See NY* A89761, dated March 4, 1997.

Holding:

Under the authority of GRI 1, the "Y" strainer at issue is provided for in heading 8421. It is classifiable in subheading 8421.29.00, HTSUS.

Effect on Other Rulings:

NY B81839, dated February 7, 1997, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF BARBECUE UTENSIL SET

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of two tariff classification rulings, and modification of another relating to the classification of tongs and a barbecue utensil set and revocation of treatment relating to the classification of these articles.

SUMMARY: Pursuant to section 1625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking two ruling letters and modifying another pertaining to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a spatula, tongs and barbecue utensil set and is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed revocation was published in the CUSTOMS BULLETIN of June 7, 2000, Volume 34, Number 23. No comments were received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after September 25, 2000.

FOR FURTHER INFORMATION CONTACT: Teresa Frazier, Commercial Rulings Division (202) 927–2511.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**". These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs

to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

In New York Ruling (NY) NY 847274, Customs ruled that a 3-piece stainless steel barbecue utensil set with oak handles was classifiable in subheading 8205.51.3030, HTSUS, which is a "basket" provision for other household handtools of iron or steel not elsewhere specified in the Tariff Schedule. In NY A80299, a stainless steel spatula was also held classifiable in subheading 8205.51.3030, HTSUS. This was also the case in NY B86141 in which Customs ruled that a 10″ angle tongs was classifiable in subheading 8205.51.3030, HTSUS. Customs has reconsidered these rulings and has determined that they are incorrect. Accordingly we are revoking NY B86141, NY 847274 and modifying NY A80229.

It is now Customs position that the articles in NY B86141, NY 847274 and NY A80229 are classifiable in heading 8215, HTSUS, which provides for other "similar kitchen tableware". Headquarters Rulings (HQ) HQ 963973 revoking NY 847274, HQ 963974 revoking NY B86141 and HQ 963975 modifying NY A80229 are set forth respectively as "Attachments A", "Attachment B", and "Attachment C".

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY B86141, NY 847274 and modifying NY A80229 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 963973, HQ 963974 and HQ 963975. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

As stated in the proposed notice, this revocation and modification will cover any rulings on this issue which may exist but have not been specifically identified. No further rulings were found. Any party who received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, has been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or

Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or of a specific ruling not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of this final decision.

Dated: July 10, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 10, 2000.

CLA-2 RR:CR:GC 963973 TF
Category: Classification
Tariff No. 8215.20.00

MR. MICHAEL O'NEILL
O'NEILL & WHITAKER, INC.
1809 Baltimore Avenue
Kansas City, MO 64108

Re: Revocation of NY 847274; steel barbecue utensil set.

DEAR MR. O'NEILL

This is in regard to NY 847274 issued to you on November 24, 1989, by the Director, Customs National Commodity Specialist Division, New York, in reply to your letter dated November 10, 1989, on behalf of Builders' Square, in which you requested a tariff classification ruling of a 3-piece stainless steel barbecue utensil set with oak wood handles. We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling sets forth the correct classification.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C 1625(c)), notice of the proposed revocation of NY 847274 was published on June 7, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 23. No comments were received in response to the notice.

Facts:

The item at issue is a 3-piece stainless steel barbecue utensil set consisting of a pair of tongs, a fork and a spatula. Each piece has a wooden handle.

In NY F847274, Customs held that the barbecue utensil set was classifiable in subheading 8205.51.3030, HTSUS, which provides for other household tools, and parts thereof, of iron or steel.

Issue:

Whether the subject barbecue utensil set is classifiable as handtools of heading 8205, HTSUS, or as kitchen or tableware in heading 8215, HTSUS.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Statute of the United Sates (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1, HTSUS,

provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6, HTSUS, may be applied.

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (ENs). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS.

The HTSUS headings under consideration are as follows:

8205 Handtools (including glass cutters) *not elsewhere specified or included;* blow torches and similar self-contained torches; vises, clamps and the like, other than accessories for and parts of machine tools; anvils; portable forges; hand- or pedal-operated grinding wheels with frameworks; base metal parts thereof:

* * * * * * *

8215 Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof:

* * * * * * *

Heading 8205, HTSUS, provides for various handtools which are used for activities such as drilling and woodwork. It also contains the clause "*not elsewhere specified or included*", a "basket" provision, which is appropriate only when there is "no tariff [other] category that covers the merchandise more specifically". *See Apex Universal, Inc., v. United States*, CIT Slip Op. 98–69 (May 21, 1998). Therefore, we will first address the other competing provision, heading 8215, HTSUS.

Heading 8215, HTSUS, lists *eo nomine* various exemplars of kitchen implements which are utilized in the culinary process. It also provides for other "similar kitchen tableware". If we determine that the articles at issue are classifiable within heading 8215, HTSUS, then they cannot be classifiable in heading 8205, HTSUS.

The ENs for heading 8215, HTSUS, includes as follows:

(1) Spoons of all kinds including salt or mustard spoons.

(2) Table forks; carving forks, serving forks, cooks' forks; cake forks; oyster forks; snail forks; toasting forks.

(3) Ladles and ladle type skimmers (for vegetables, frying, etc.).

(4) Slicers for serving fish, cake, strawberries, asparagus.

(5) Non-cutting fish-knives and butter-knives.

(6) Sugar tongs of all kinds (cutting or not), cake tongs, hors-d'oeuvre tongs, asparagus tongs, snail tongs, meat tongs and ice tongs.

(7) Other tableware, such as poultry or meat grips, and lobster or unit grips.

These goods may be of one piece or fitted with handles of base metal, wood, plastics, etc.

The 3-piece subject barbecue utensil set consists of a pair of tongs, a fork and a spatula. Forks of various kinds are specifically listed among the exemplars. Therefore, we can conclude that the subject fork is classifiable in heading 8215, HTSUS.

Although the subject tongs are not the same as the "sugar tongs" listed within heading 8215, HTSUS, we find the tongs to be classifiable within this heading because the ENs to heading 8215, HTSUS, enumerate a range of tongs as within the scope of "similar kitchen or tableware," including "sugar tongs of all kinds (cutting or not), cake tongs, hors-d'oeuvre tongs, asparagus tongs, snail tongs, meat tongs and ice tongs".

With regard to the subject spatula, although not listed *eo nomine* among the exemplars in heading 8215, HTSUS, we find the spatula to fall within the purview of the heading and thus classifiable by the operation of *ejusdem generis* as it "possess[es] the essential characteristics * * * or * * * common purpose" similar to other exemplars (e.g., the cake server and butter knives) as it easily turns and lifts food. *See Totes, Inc. v. US*, 18 CIT 919 (1994)(holding trunk organizers classifiable in heading 4204, HTSUS, as "similar containers" by application of *ejusdem generis* although they were not described *eo nomine* by any of the exemplars.)

Each of the barbecue utensils is classifiable in heading 8215, HTSUS, at GRI 1. If imported separately, the fork would be classified in subheading 8215.99.24, HTSUS. The tongs and spatula each would be classified in subheading 8215.99.50. At GRI 6, and by reference to GRI 1, the barbecue utensil set is specifically described in subheading 8215.20.00, which provides for sets of assorted articles.

Accordingly, the proper classification of the barbecue utensil set is subheading 8215.20.00, HTSUS.

Holding:

Under the authority of GRI 1, applied to the subheading level by GRI 6, the subject barbecue utensil set is provided in heading 8215, HTSUS, and is classified in subheading 8215.20.00, HTSUS.

Effect on Other Rulings:

NY 847274, dated November 24, 1989, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 10, 2000.

CLA–2 RR:CR:GC 963974 TF
Category: Classification
Tariff No. 8215.99.50

MS. LORI ROSARIO
METRO CUSTOMS BROKERS, INC.
181 South Franklin Avenue, Suite 204
Valley Stream, NY 11581

Re: Revocation of NY B86141; 10″ angled tongs.

DEAR MR. TOMASEK:

This is in regard to NY B86141 issued to you on June 10, 1997, by the Director, Customs National Commodity Specialist Division, New York, in reply to your letter dated June 3, 1997, on behalf of Acme International, in which you requested a tariff classification ruling of a pair of angled tongs. We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling sets forth the correct classification.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C 1625(c)), notice of the proposed revocation of NY 847274 was published on June 7, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 23. No comments were received in response to the notice.

Facts:

The item at issue is a pair of 10″ angled tongs (model #80142), manufactured by Acme International of China. The tongs have grooves which lift, hold and turn food.

In NY B86141, Customs held that the subject tongs were classifiable in subheading 8205.51.3030, HTSUS, which provides for other household tools, and parts thereof, of iron or steel.

Issue:

Whether the tongs are properly classifiable as handtools of heading 8205, HTSUS, or as kitchen or tableware in heading 8215, HTSUS.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Statute of the United Sates (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1, HTSUS, provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified sole-

ly on the basis of GRI 1, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6, HTSUS, may be applied.

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (ENs). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS.

The HTSUS headings under consideration are as follows:

8205 Handtools (including glass cutters*) not elsewhere specified or included;* blow torches and similar self-contained torches; vises, clamps and the like, other than accessories for and parts of machine tools; anvils; portable forges; hand- or pedal-operated grinding wheels with frameworks; base metal parts thereof:

* * * * * * *

8215 Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof:

* * * * * * *

Heading 8205, HTSUS provides for various handtools which are used for activities such as drilling and woodwork. It also contains the clause "*not elsewhere specified or included*", a "basket" provision, which is appropriate "only when there is no tariff [other] category that covers the merchandise more specifically". *See Apex Universal, Inc., v. United States*, CIT Slip Op. 98–69 (May 21, 1998). Therefore, we will first address the other competing provision, heading 8215, HTSUS.

Heading 8215, HTSUS, lists *eo nomine* various exemplars of kitchen utensils. It also provides for other "similar kitchen tableware". If we determine that the subject tongs are classifiable within heading 8215, HTSUS, then they cannot be classifiable in heading 8205, HTSUS.

The ENs for heading 8215, HTSUS, includes, in pertinent part, as follows:

> (6) Sugar tongs of all kinds (cutting or not), cake tongs, hors-d'oeuvre tongs, asparagus tongs, snail tongs, meat tongs and ice tongs.
>
> These goods may be of one piece or fitted with handles of base metal, wood, plastics, etc.

Although the subject tongs are not the same as the "sugar tongs" listed within heading 8215, HTSUS, we find the tongs to be classifiable within this heading because the ENs to heading 8215, HTSUS, enumerate a range of tongs as within the scope of "similar kitchen or tableware", including "sugar tongs of all kinds (cutting or not), cake tongs, hors-d'oeuvre tongs, asparagus tongs, snail tongs, meat tongs and ice tongs".

As the 10″ angled tongs are elsewhere specified or included, they cannot be classified in heading 8205, HTSUS. Accordingly, the proper classification of the 10″ angled tongs is subheading 8215.99.50, HTSUS.

Holding:

Under the authority of GRI 1, applied to the subheading level by GRI 6, the 10″ angled tongs are provided in heading 8215, HTSUS, and are classified in subheading 8215.99.50, HTSUS.

NY B86141, dated June 10, 1997, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 10, 2000.

CLA–2 RR:CR:GC 963975 TF
Category: Classification
Tariff No. 8215.99.50

MR. RICHARD TOMASEK
PHOENIX INTERNATIONAL
712 N. Central Avenue
Wood Dale, IL 60191

Re: Modification of NY A80229; stainless steel spatula.

DEAR MR. TOMASEK:

This is in regard to NY A80229 issued to you on February 20, 1996, by the Director, Customs National Commodity Specialist Division, New York, in reply to your letter dated January 25, 1996, on behalf of The Pampered Chef, in which you requested a tariff classification ruling of a spatula. We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling sets forth the correct classification.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C 1625(c)), notice of the proposed revocation of NY 847274 was published on June 7, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 23. No comments were received in response to the notice.

Facts:

The item at issue is a stainless steel bladed spatula (item #2620) with wooden handles which is used as a mini-serving tool.

In NY A80229, Customs held that the stainless steel spatula was classifiable in subheading 8205.51.3030, HTSUS, which provides for other household tools, and parts thereof, of iron or steel.

Issue:

Whether the subject spatula is properly classifiable as handtools of heading 8205, HTSUS, or as kitchen or tableware in heading 8215, HTSUS.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Statute of the United Sates (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1, HTSUS, provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6, HTSUS, may be applied.

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (ENs). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS.

The HTSUS headings under consideration are as follows:

8205 Handtools (including glass cutters) *not elsewhere specified or included;* blow torches and similar self-contained torches; vises, clamps and the like, other than accessories for and parts of machine tools; anvils; portable forges; hand- or pedal-operated grinding wheels with frameworks; base metal parts thereof:

* * * * * * *

8215 Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof:

* * * * * * *

Heading 8205, HTSUS, provides for various handtools which are used for activities such as drilling and woodwork. It also contains the clause "*not elsewhere specified or included*",

a "basket" provision, which is appropriate only when there is "no tariff [other] category that covers the merchandise more specifically". *See Apex Universal, Inc., v. United States*, CIT Slip Op. 98–69 (May 21, 1998). Therefore, we will first address the other competing provision, heading 8215, HTSUS.

Heading 8215, HTSUS, lists *eo nomine* various exemplars of kitchen utensils. It also provides for other "similar kitchen tableware". If we determine that the subject spatula is classifiable within heading 8215, HTSUS, then it cannot be classifiable in heading 8205, HTSUS.

The subject spatula, although not listed *eo nomine* among the exemplars in heading 8215, HTSUS, falls within the purview of the heading and is classifiable by the operation of *ejusdem generis* as it "possess[es] the essential characteristics * * * or * * * common purpose" similarly to other exemplars (e.g., the cake server and butter knives) as it easily turns and lifts food. *See Totes, Inc. v. US*, 18 CIT 919 (1994)(holding trunk organizers classifiable in heading 4204, HTSUS, as "similar containers" by application of *ejusdem generis* although they were not described *eo nomine* by any of the exemplars.)

As the subject spatula is elsewhere specified or included, it cannot be classifiable in heading 8205, HTSUS.

Accordingly, the proper classification of the spatula is subheading 8215.99.50, HTSUS.

Holding:

Under the authority of GRI 1, HTSUS, applied to the subheading level by GRI 6, HTSUS, the subject spatula is provided in heading 8215, HTSUS, and is classified in subheading 8215.99.50, HTSUS.

Effect on Other Rulings:

NY A80229, dated February 20, 1996, is hereby modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF SPARK PLUG BOOT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Revocation of ruling letter and treatment relating to tariff classification of spark plug boot.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling relating to the tariff classification of spark plug boots, and revoking any treatment Customs has previously accorded to substantially identical transactions. Notice of the proposed modification was published on May 31, 2000, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 25, 2000.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927–0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to Customs obligations, a notice was published on May 31, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 22, proposing to revoke *NY* A82816, dated May 16, 1996, in which spark plug boots for motor vehicle ignition systems were held to be classifiable in subheading 8536.90.00, HTSUS, as electrical apparatus for making connections to or in electrical circuits, for a voltage not exceeding 1,000 V. This ruling was based on Customs belief that the device met the voltage requirement for that provision.

It is now Customs position that these spark plug boots are classifiable in subheading 8535.90.80, HTSUS, as electrical apparatus for making connections to or in electrical circuits, for a voltage exceeding 1,000 V. Pursuant to 19 U.S.C. 1625(c)(1)), Customs is revoking *NY* A82816 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis in *HQ* 963270, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment it previously accorded to substantially identical transactions. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: July 3, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 3, 2000.
CLA–2 RR:CR:GC 963270 JAS
Category: Classification
Tariff No. 8535.90.80

MR. MICHAEL O'NEILL
O'NEILL & WHITAKER, INC.
1809 Baltimore Avenue
Kansas City, MO 64108

Re: *NY* A82816 Revoked; Spark Plug Boot.

DEAR MR. O'NEILL:

In a letter to you, dated May 16, 1996, on behalf of Standard Motor Products, Inc., the Director of Customs National Commodity Specialist Division, New York, held that a spark plug boot was classifiable in subheading 8536.90.00, Harmonized Tariff Schedule of the United States (HTSUS), as electrical apparatus for making connections to or in electrical circuits, for a voltage not exceeding 1,000 V.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of *NY* A82816 was published on May 31, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 22. No comments were received in response to that notice.

Facts:

The spark plug boot at issue was described in *NY* A82816 as consisting of a ceramic tubular housing with rubber coated electrical connectors at each end. Standard automotive spark plug cables normally have a boot crimped onto each end. The boot on one end of the cable snaps onto a spark plug while the boot on the other end of the cable attaches to the distributor in the ignition system. This completes the circuit between the spark plug and the distributor and provides the spark to ignite the air-fuel mixture in the cylinders of the engine. It was noted in the ruling that while the ceramic housing and rubber coated connectors provided a degree of insulation, the principal function of the spark plug boot was to provide electrical connection.

The HTSUS provisions under consideration are as follows:

8535 Electrical apparatus * * * for making connections to or in electrical circuits * * *, for a voltage exceeding 1,000 V:

* * * * * * *

8536 Electrical apparatus * * * for making connections to or in electrical circuits * * *, for a voltage not exceeding 1,000 V:

Issue:

Whether the spark plug boot is a good of heading 8535.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Headings 8535 and 8536 both cover electrical apparatus generally used in power distribution systems. Heading 8535 covers electrical apparatus designed for a voltage exceeding 1,000 V, while heading 8536 covers such apparatus designed for a voltage not exceeding 1,000 V. Customs initially believed that heading 8536 covered the voltage rating of the spark plug boots at issue. It is now apparent that in order to jump the gap between the electrodes of the spark plugs, and to trigger the high voltage needed for ignition, the 12-volt potential of today's motor vehicle electrical system must be stepped up to about 20,000 volts. The spark plug boots at issue, therefore, are electrical apparatus described by heading 8535.

Holding:

Under the authority of GRI 1, spark plug boots for motor vehicles, as described, are provided for in heading 8535. They are classifiable in subheading 8535.90.80, HTSUS.

Effect on Other Rulings:

NY A82816, dated May 16, 1996, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CLOCK RADIOS INCORPORATING SOUND REPRODUCING DEVICES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation and modification of tariff classification ruling letters and the revocation of treatment relating to the classification of clock radios that incorporate microchips that store and reproduce sound.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking two rulings and modifying three rulings, and is revoking any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of clock radios that incorporate microchips that store and reproduce sound, under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocations and modifications were published on May 31, 2000, in Vol. 34, No. 22 of the CUSTOMS BULLETIN. The only comment received was in opposition to the revocations.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after September 25, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 927–2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are "**informed compliance**" and "**shared responsibility.**" These concepts are premised on the idea that in order to maximize voluntary com-

pliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. Pursuant to Customs obligations, a notice of proposed revocation of New York Ruling Letter (NY) A89251, dated November 8, 1996, Headquarters Ruling Letter HQ 960114, dated September 15, 1997, and modification of NY C87866, dated June 11, 1998, NY C88482, dated June 16, 1998, and NY D85257, dated December 3, 1998, relating to the tariff classification of a clock radio which incorporates microchips that store and reproduce sound, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. Notice of the proposed revocations and modifications was published on May 31, 2000, in Vol. 34, No. 22 of the CUSTOMS BULLETIN. The only comment received was in opposition to the revocations of New York Ruling Letter A89251 and Headquarters Ruling Letter (HQ) 960114.

As stated in the proposed notice, these revocation and modification actions will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY A89251 and HQ 960114, and is modifying NY C87866, NY C88482, and NY D85257, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 963847 revoking NY A89251 and HQ 960114, HQ 962340 modifying NY C87866, HQ 963846 modifying NY C88482, and HQ 963845 modifying NY D85257 (*see* "Attachment A", "Attachment B", "Attachment C" and "Attachment D", respectively, to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

Dated: July 6, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 6, 2000.

CLA–2 RR:CR:GC 963847 AML
Category: Classification
Tariff No. 8527.19.50

MR. FRED LARIAN
MICRO GAMES OF AMERICA
16730 Schoenborn Street
North Hills, CA 91343–6122

Re: Reconsideration of NY A89251 and HQ 960144; clock radio that incorporates a book stand and sound reproducing device.

DEAR MR. LARIAN:

This is in regard to New York Ruling Letter (NY) A89251, issued to you by the Customs National Commodity Specialist Division, New York, on November 8, 1996, and Headquarters Ruling Letter (HQ) 960114, dated September 15, 1997, which affirmed NY A89251. In those rulings, the Book Crypt Clock Radio With Sound Effects, model # GB–4124, a clock radio which incorporates a book stand and a sound reproducing device, was classified under subheading 8527.19.10, Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed the classification of the item and determined that it is incorrect. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published on May 31, 2000, in Vol. 34, No. 22 of the CUSTOMS BULLETIN, proposing to modify NY D85257 and to revoke the treatment pertaining to the clock radio that contains a microchip incorporated into the radio circuitry where it stores and reproduces sounds. The only comment received in response to this notice was in opposition to the proposal.

Facts:

The Book Crypt Clock Radio With Sound Effects, model GB–4124, consists of a molded plastic book holder with two "Goosebumps" hands sized and spaced sufficiently to function as book ends, into which is incorporated a liquid crystal display (LCD) digital alarm clock with time and date display, an AM/FM radio with rotary tuning, built-in antenna, and motion-activated sound effects in the form of a transducer or electronic chip. Removing a book from or placing a book on the bookcase activates "scary" sound effects such as "shrieking ghosts, evil laughter and monster roars." The article, which is powered by three "AA" batteries, is imported without books.

Issue:

Whether the clock radio combined with a book shelf and sound reproducing apparatus is classifiable under subheading 8527.19.10, HTSUS, as other reception apparatus for radiobroadcasting, whether or not combined with sound recording or reproducing apparatus, valued over $40 each, incorporating a clock or clock-timer, not in combination with any other article, and not designed for motor vehicle installation; or in subheading 8527.19.50, HTSUS, other?

Law and Analysis:

Classification of imported merchandise is accomplished pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). Classification under the HTSUS is guided by the General Rules of Interpretation of the Harmonized System (GRIs). GRI 1, HTSUS, states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]" GRI 2(b) provides in pertinent part that "[a]ny reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance [and] [t]he classification of goods consisting of more than one material or substance shall be according to the principles of [GRI] 3."

The HTSUS headings and subheadings under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.10.00	Office or school supplies.
3926.90	Other:
3926.90.98	Other.
* * * * * * *	
8527	Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock:
	Radiobroadcast receivers capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy:
8527.13	Other apparatus combined with sound recording or reproducing apparatus:
	Other:
8527.13.60	Other.
8527.19	Other:
8527.19.10	Valued not over $40 each, incorporating a clock or clock-timer, not in combination with any other article, and not designed for motor vehicle installation.
8527.19.50	Other.
* * * * * * *	
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
	Other machines and apparatus:
	Other:
	Other:
8543.89.96	Other.

The question for classification purposes is whether the clock radio or the sound-reproducing device or the molded plastic book holder imparts the essential character of the article. It appears from the photocopies that the plastic components predominate the bulk of

the holders. However, the clock radio and sound reproducing device are central to the use of the goods.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89–80, published in the Federal Register August 23, 1989 (54 FR 35127, 35128).

The molded plastic book ends/holder cannot be classified in heading 9403, HTSUS, as furniture, because EN 94.03, HTSUS, requires that the articles classifiable in that heading must be stackable or placed on the floor. Neither can the molded plastic book ends/holder be classified in heading 8304, HTSUS, as other desk equipment, because EN 83.04 provides that for an article to be classifiable in that heading, an article must be made of base metal. Therefore the molded plastic component of the article is classifiable in heading 3926, HTSUS, which provides for articles of plastic.

The clock radio component of the composite article would itself be classifiable within heading 8527, HTSUS, which provides for, *inter alia*, clock radios. The electronic sound microchip component would be classifiable under subheading 8543.89.96, HTSUS, as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85. See Headquarters Ruling Letter (HQ) 955116, dated October 8, 1993; HQ 953105, dated April 15, 1993; and HQ 954363, dated August 27, 1993, which found such articles to be classifiable in subheading 8543.80.90, HTSUS, the predecessor to subheading 8543.89.96, HTSUS.

The legal notes to Section XVI provide, in pertinent part, that:

* * * * * * *

> 3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

* * * * * * *

As a result of amendments to the ENs made in 1989, the EN to heading 8543, HTSUS, provides, in pertinent part:

The heading includes, *inter alia*:

* * * * * * *

> (13) Electronic musical modules for incorporation in a wide variety of utilitarian or other goods, *e.g.*, wrist watches, cups and greeting cards. These modules usually consist of an electronic integrated circuit, a resistor, a loudspeaker and a mercury cell. They contain fixed musical programmes.

EN 85.43(13) states that heading 8543 includes electronic music modules, to which the subject sound devices are similar. However, we note that musical mechanisms are also mentioned in the ENs to the music box provision, heading 9208, HTSUS, which states:

> Articles which incorporate a musical mechanism but which are essentially utilitarian or ornamental in function (for example, clocks, miniature wooden furniture, glass vases containing artificial flowers, ceramic figurines) **are not** regarded as musical boxes within the meaning of this heading. These articles are classified in the same headings as the corresponding articles not incorporating a musical mechanism [emphasis in original].
>
> Also, articles such as wristwatches, cups and greeting cards containing electronic musical modules **are not** regarded as goods of this heading. Such articles are classified in the same headings as the corresponding articles not incorporating such modules [emphasis in original].

Customs has recognized the treatment of such microchips by the World Customs Organization ("WCO") (*i.e.*, that articles containing such chips should be classified in the same headings as the corresponding articles not incorporating a musical mechanism) in several rulings: Headquarters Ruling Letter (HQ) 958397, dated December 19, 1995; HQ 959552, dated November 22, 1996; HQ 959043, dated April 11, 1997, and HQ 959403, dated April 11, 1997. In each of those rulings Customs noted that:

> In 1989, anticipating classification problems with respect to merchandise containing such musical mechanisms, the Customs Cooperation Council or CCC (now the

> World Customs Organization or WCO) provided guidance which Customs has long followed. With electronic chips having become relatively inexpensive and simple to install in a wide variety of products, the CCC suggested that merchandise containing battery-operated chips with speakers, should be classified in the same headings as the corresponding articles not incorporating such modules.

In light of the above, the intent of the drafters of the international Harmonized System was to take no notice of sound microchips, whether they produce musical or other sounds, in classifying goods that contain them. By application of Note 3 to Section XVI, and in accordance with the above guidance of the WCO, we believe the "Goosebumps" is a composite machine whose principal function is provided by the clock radio, not the sound microchip. Therefore, at GRI 1, the component consisting of a clock radio that incorporates a sound-reproducing device is classified as a clock radio in heading 8527. Heading 8543 and the microchip are eliminated from further consideration in classifying the merchandise at issue.

Because the "Book Crypt Clock Radio with Sound Effects" is comprised of distinct components (the plastic book holder and the clock radio incorporating a sound reproducing device), the heading in which the article is classifiable cannot be determined pursuant to GRI 1. Resort must then be made to the remaining GRIs.

GRI 3 states, in pertinent part:

> When by application of [GRI] 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:
>
> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
>
> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
>
> * * * * * * *

EN V to GRI 3(a), p. 4, states in pertinent part that "when two or more headings each refer to part only of the materials contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description than the others. In such cases, the classification shall be determined by [GRIs] 3(b) or 3(c)." The product under consideration is one in which different materials form a practically inseparable whole. Resort then to GRIs 3(b) and 3(c) must be made in order to make a classification.

The term "essential character" is not defined within the HTSUS, GRIs or ENs. EN VIII to GRI 3(b), p. 4, gives guidance, stating that:

> [t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

Recently, there have been several decisions by the Court of International Trade (CIT) which addressed "essential character" for purposes of GRI 3(b). *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), affirmed, 119 F. 3rd 969 (Fed. Cir. 1997), involved the classification of shower curtain sets, consisting of an outer textile curtain, inner plastic magnetic liner, and plastic hooks. The Court examined the role of the constituent materials in relation to the use of the goods and found that, although the relative value of the textile curtain was greater than that of the plastic liner, and that although the textile curtain also served protective, privacy and decorative functions, because of the fact that the plastic liner served the indispensable function of keeping water inside the shower, the plastic liner imparted the essential character upon the set. See also *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co. v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995), in which the Court also looked to the role of the constituent material in relation to the use of the goods to determine essential character.

Consideration of the "Book Crypt Clock Radio with Sound Effects" reveals that although the molded plastic case houses the electronics of the clock radio, supports books and aesthetically enhances the product, it is the clock radio that imparts the essential character of the product. The clock radio is the component that is emphasized in the advertisement and on the packaging of the article. The nature of the clock radio component, its value, and its central role in relation to the use of the goods all contribute to a finding that the essential character of the article is imparted by the clock radio. Therefore, the article is classifiable at GRI 3(b) in heading 8527, HTSUS.

The "Goosebumps" is a clock radio combined with a molded plastic book holder and a sound-reproducing device, within the same housing. Because the article is designed for table or desktop use, and because of the inclusion of the clock radio, the reasonable conclusion is that the article is intended for bedroom use. By application of GRI 6 and by reference to GRI 1, consideration of the appropriate 6-digit heading is next.

Classification of the subject article within subheadings 8527.13 or 8527.19, HTSUS, must be considered. Included within heading 8527, HTSUS, is "[r]eception apparatus * * * whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock[.]" Radiobroadcast reception apparatus are separated between apparatus capable of operating without an external source of power (subheadings 8527.12 through 8527.19, HTSUS) and apparatus incapable of operating without an external source of power (subheadings 8527.21 through 8527.29, HTSUS). In the first category are pocket sized radio cassette players (subheading 8527.12.00, HTSUS), other apparatus combined with sound recording or reproducing apparatus (subheading 8527.13, HTSUS), and other (than the above)(subheading 8527.19, HTSUS).

The "Goosebumps" is not a pocket sized radio cassette player, so subheading 8527.12.00, HTSUS, is inapplicable. Subheading 8527.13, HTSUS, is also inapplicable because it provides for apparatus combined with sound recording or reproducing apparatus. As noted above, the microchip is not a sound reproducing device of heading 8527 because it is classified in heading 8543, HTSUS. Thus, subheading 8527.13 does not describe the merchandise. The goods are specifically and completely described in the residual provision, subheading 8527.19, as a radiobroadcast receiver combined with a clock.

Subheading 8527.19 incorporates all radios combined with other articles of the one-dash provision at issue. Of those apparatus captured in subheading 8527.19, subheading 8527.19.50 captures this article because it is a clock radio in combination with any other article. By operation of Note 3 to Section XVI, and in consideration of the distinct plastic book holder with which it is combined, we find that the clock radio is specifically described in subheading 8527.19.50, HTSUS.

Holding:

The "Goosebumps" model # GB–4124, a clock radio which incorporates a book stand and a sound reproducing device, is classifiable under subheading 8527.19.50, HTSUS, which provides for other reception apparatus for radiotelephony combined with sound recording or reproducing apparatus, valued not over $40 each, incorporating a clock or clock-timer, in combination with another article, and not designed for motor vehicle installation.

Effect on Other Rulings:

NY A89251 and HQ 960114 are revoked. In accordance with 19 U.S.C. §1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 6, 2000.
CLA–2 RR:CR:GC 962340 AML
Category: Classification
Tariff No. 8527.19.10

MR. KENNETH R. PALEY
SHARRETTS, PALEY, CARTER & BLAUVELT, P.C.
Sixty seven Broad Street
New York, NY 10004

Re: Reconsideration of NY C87866; Clock radio incorporating a microchip that electronically stores and reproduces sounds.

DEAR MR. PALEY:

This is in reference to New York Ruling Letter (NY) C87866, issued to you on June 11, 1998, which concerned the classification concerning the classification of the "Sound Spa," a clock radio that contains a microchip incorporated into the radio circuitry where it stores and reproduces sounds, under the Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered NY C87866 and now believe that the classification set forth is incorrect. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published on May 31, 2000, in Vol. 34, No. 22 of the CUSTOMS BULLETIN, proposing to modify NY C87866 and to revoke the treatment pertaining to the clock radio that contains a microchip incorporated into the radio circuitry where it stores and reproduces sounds. The only comment received in response to this notice was in opposition to the proposal.

Facts:

The "Sound Spa," model # SS–400, is an AM/FM clock radio which, besides the AM/FM radio function, presumably contains a microchip that is incorporated into the radio circuitry, where it stores and reproduces any of a selection of the following six "natural" sounds: woodlands, spring rain, mountain stream, white noise, ocean waves and summer night. The article has a liquid crystal display (LCD) clock powered by a single, triple A ("AAA") battery, as well as alarm and snooze features. The radio and sound reproducing features can function either when powered by three double A ("AA") batteries or electricity via an AC adapter. The article has an "auto sleep timer" which facilitates listening to the sound of the radio or sound reproducing function for a measured increment of time after which the article will turn off the sound being emitted. The FOB price of the article is less than $40.00.

Issue:

Whether the "Sound Spa," a clock radio incorporating sound reproducing apparatus, is classifiable under subheading 8527.19.10, HTSUS, as other reception apparatus for radiobroadcasting, whether or not combined with sound recording or reproducing apparatus, valued not over $40 each, incorporating a clock or clock-timer, not in combination with any other article, and not designed for motor vehicle installation?

Law and Analysis:

Classification of imported merchandise is accomplished pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). Classification under the HTSUS is guided by the General Rules of Interpretation of the Harmonized System (GRIs). GRI 1, HTSUS, states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]"

The applicable headings and subheadings under consideration are as follows:

8527 Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock:

Radiobroadcast receivers capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy:

8527.13	Other apparatus combined with sound recording or reproducing apparatus:
	Other:
8527.13.60	Other.
8527.19	Other:
8527.19.10	Valued not over $40 each, incorporating a clock or clock-timer, not in combination with any other article, and not designed for motor vehicle installation.
8527.19.50	Other.

* * * * * * *

8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
	Other machines and apparatus:
	Other:
	Other:
8543.89.96	Other.

The legal notes to Section XVI provide, in pertinent part, that:

* * * * * * *

3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

* * * * * * *

Heading 8527, HTSUS, provides for various combinations of radios with clocks, tape players, tape recorders, CD players, and for models that have different sources of power, usually battery or electricity. The "Sound Spa" is a clock radio combined with an electronic sound microchip within the same housing. Because of the inclusion of the clock, alarm and sleep timer functions, the reasonable conclusion is that the article is intended for bedside use. At the meeting held at Customs Headquarters, you agreed with Customs that the "natural" sounds were stored and reproduced from a microchip. In your supplemental submission, you averred that you were unable to provide the value of the microchip. The sound microchip has its own controls, and presumably shares the power source, circuitry and speaker of the radio. Considered separately, the electronic sound microchip would be classifiable under subheading 8543.89.96, HTSUS, as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85. See Headquarters Ruling Letter (HQ) 955116, dated October 8, 1993; HQ 953105, dated April 15, 1993; and HQ 954363, dated August 27, 1993, which found such articles to be classifiable in subheading 8543.80.90, HTSUS, the predecessor to subheading 8543.89.96, HTSUS.

The Harmonized Commodity Description And Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

As a result of amendments to the ENs made in 1989, the EN to heading 8543, HTSUS, provides, in pertinent part:

The heading includes, *inter alia*:

* * * * * * *

(13) Electronic musical modules for incorporation in a wide variety of utilitarian or other goods, *e.g.*, wrist watches, cups and greeting cards. These modules usually consist of an electronic integrated circuit, a resistor, a loudspeaker and a mercury cell. They contain fixed musical programmes.

EN 85.43(13) states that heading 8543 includes electronic music modules, to which the subject sound devices are akin. However, we note that musical mechanisms are also mentioned in the ENs to the music box provision, heading 9208, HTSUS, which states:

Articles which incorporate a musical mechanism but which are essentially utilitarian or ornamental in function (for example, clocks, miniature wooden furniture, glass

> vases containing artificial flowers, ceramic figurines) **are not** regarded as musical boxes within the meaning of this heading. These articles are classified in the same headings as the corresponding articles not incorporating a musical mechanism [emphasis in original].
>
> Also, articles such as wrist watches, cups and greeting cards containing electronic musical modules **are not** regarded as goods of this heading. Such articles are classified in the same headings as the corresponding articles not incorporating such modules [emphasis in original].

Customs has recognized the treatment of such microchips by the World Customs Organization ("WCO") (*i.e.*, that articles containing such chips should be classified in the same headings as the corresponding articles not incorporating a musical mechanism) in several rulings: Headquarters Ruling Letter (HQ) 958397, dated December 19, 1995; HQ 959552, dated November 22, 1996; HQ 959043, dated April 11, 1997, and HQ 959403, dated April 11, 1997. In each of those rulings Customs noted that:

> In 1989, anticipating classification problems with respect to merchandise containing such musical mechanisms, the Customs Cooperation Council or CCC (now the World Customs Organization or WCO) provided guidance which Customs has long followed. With electronic chips having become relatively inexpensive and simple to install in a wide variety of products, the CCC suggested that merchandise containing battery-operated chips with speakers, should be classified in the same headings as the corresponding articles not incorporating such modules.

In light of the above, the intent of the drafters of the international Harmonized System was to take no notice of sound microchips, whether they produce musical or other sounds, in classifying goods that contain them. By application of Note 3 to Section XVI, and in accordance with the above guidance of the WCO, we believe the Sound Spa is a composite machine whose principal function is provided by the clock radio, not the sound microchip. Therefore, at GRI 1, the instant article is classified as a clock radio in heading 8527. Heading 8543 and the microchip are eliminated from further consideration in classifying the merchandise at issue.

Classification of the subject article within subheadings 8527.13 or 8527.19, HTSUS, has been suggested. Included within heading 8527, HTSUS, is "[r]eception apparatus * * * whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock[.]" Radiobroadcast reception apparatus are separated between apparatus capable of operating without an external source of power (subheadings 8527.12 through 8527.19, HTSUS) and apparatus incapable of operating without an external source of power (subheadings 8527.21 through 8527.29, HTSUS). In the first category are pocket sized radio cassette players (subheading 8527.12.00, HTSUS), other apparatus combined with sound recording or reproducing apparatus (subheading 8527.13, HTSUS), and other (than the above)(subheading 8527.19, HTSUS).

The "Sound Spa" is not a pocket sized radio cassette player, so subheading 8527.12.00, HTSUS, is inapplicable. Subheading 8527.13, HTSUS, is also inapplicable because it provides for apparatus combined with sound recording or reproducing apparatus. As noted above, the microchip is not a sound reproducing device of heading 8527 because it is classified in heading 8543, HTSUS. Thus, subheading 8527.13 does not describe the merchandise. The goods are specifically and completely described in the residual provision, subheading 8527.19, as a radiobroadcast receiver combined with a clock.

Subheading 8527.19 incorporates all radios combined with other articles of the one-dash provision at issue. Of those apparatus captured in subheading 8527.19, subheading 8527.19.10 covers those, in pertinent part, valued not over $40 each, incorporating a clock or clock-timer, and not in combination with any other article. By operation of Note 3 to Section XVI, we find that the clock radio is specifically described in subheading 8527.19.10, HTSUS.

Holding:

The Sound Spa is classifiable under subheading 8527.19.10, HTSUS, which provides for other reception apparatus for radiotelephony combined with sound recording or reproducing apparatus, valued not over $40 each, incorporating a clock or clock-timer, not in combination with any other article, and not for installation in a motor vehicle.

Effect on Other Rulings:

NY C87866 is modified. In accordance with 19 U.S.C. §1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 6, 2000.

CLA–2 RR:CR:GC 963846 AML
Category: Classification
Tariff No. 8527.19.10

MS. LAURA DENNY
CBT INTERNATIONAL INC.
110 West Ocean Blvd.
Suite 728
Long Beach, CA 90802

Re: Reconsideration of NY D85257; a clock radio that incorporates a sound reproducing device.

DEAR MS. DENNY:

This is in regard to New York Ruling Letter (NY) D85257, issued to you by the Customs National Commodity Specialist Division, New York, on December 3, 1998, on behalf of J.B. Research. In that ruling, the "Stereo Sound Therapy," model # 722, a clock radio which incorporates a sound reproducing device, was classified under subheading 8527.19.50, Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed the classification of the item and determined that it is incorrect. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published on May 31, 2000, in Vol. 34, No. 22 of the CUSTOMS BULLETIN, proposing to modify NY D85257 and to revoke the treatment pertaining to the clock radio that contains a microchip incorporated into the radio circuitry where it stores and reproduces sounds. The only comment received in response to this notice was in opposition to the proposal.

Facts:

The "Stereo Sound Therapy," is a clock radio which, besides the radio function, can program and produce any of a selection of twelve "natural" sounds, such as ocean waves, song birds, night sounds of crickets, sounds of rain, etc. The sounds are stored on a microchip within the article. The article is sold with a remote control device. The FOB price of the article is less than $40.00.

Issue:

Whether the clock radio combined with sound reproducing apparatus is classifiable under subheading 8527.19.10, HTSUS, as other reception apparatus for radiobroadcasting, whether or not combined with sound recording or reproducing apparatus, valued not over $40 each, incorporating a clock or clock-timer, in combination with any other article, and not designed for motor vehicle installation?

Law and Analysis:

Classification of imported merchandise is accomplished pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). Classification under the HTSUS is guided by the General Rules of Interpretation of the Harmonized System (GRI's). GRI 1, HTSUS,

states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]"

The HTSUS heading and subheadings under consideration are as follows:

8527	Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock:
	Radiobroadcast receivers capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy:
8527.13	Other apparatus combined with sound recording or reproducing apparatus:
	Other:
8527.13.60	Other.
8527.19	Other:
8527.19.10	Valued not over $40 each, incorporating a clock or clock-timer, not in combination with any other article, and not designed for motor vehicle installation.
8527.19.50	Other.
* * * * * * *	
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
	Other machines and apparatus:
	Other:
	Other:
8543.89.96	Other.

The legal notes to Section XVI provide, in pertinent part, that:

* * * * * * *

3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

* * * * * * *

Heading 8527, HTSUS, provides for various combinations of radios with clocks, tape players, tape recorders, CD players, and for models that have different sources of power, usually battery or electricity. The "Stereo Sound Therapy" is a clock radio combined with an electronic sound microchip within the same housing. Because of the inclusion of the clock, alarm and sleep timer functions, the reasonable conclusion is that the article is intended for bedside use. The sound microchip has its own controls, and presumably shares the power source, circuitry and speaker of the radio. Considered separately, the electronic sound microchip would be classifiable under subheading 8543.89.96, HTSUS, as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85. See Headquarters Ruling Letter (HQ) 955116, dated October 8, 1993; HQ 953105, dated April 15, 1993; and HQ 954363, dated August 27, 1993, which found such articles to be classifiable in subheading 8543.80.90, HTSUS, the predecessor to subheading 8543.89.96, HTSUS.

The Harmonized Commodity Description And Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

As a result of amendments to the ENs made in 1989, the EN to heading 8543, HTSUS, provides, in pertinent part:

The heading includes, *inter alia*:

* * * * * * *

(13) Electronic musical modules for incorporation in a wide variety of utilitarian or other goods, *e.g.*, wrist watches, cups and greeting cards. These modules usually consist of an electronic integrated circuit, a resistor, a loudspeaker and a mercury cell. They contain fixed musical programmes.

EN 85.43(13) states that heading 8543 includes electronic music modules, to which the subject sound devices are akin. However, we note that musical mechanisms are also mentioned in the ENs to the music box provision, heading 9208, HTSUS, which states:

> Articles which incorporate a musical mechanism but which are essentially utilitarian or ornamental in function (for example, clocks, miniature wooden furniture, glass vases containing artificial flowers, ceramic figurines) **are not** regarded as musical boxes within the meaning of this heading. These articles are classified in the same headings as the corresponding articles not incorporating a musical mechanism [emphasis in original].
>
> Also, articles such as wristwatches, cups and greeting cards containing electronic musical modules **are not** regarded as goods of this heading. Such articles are classified in the same headings as the corresponding articles not incorporating such modules [emphasis in original].

Customs has recognized the treatment of such microchips by the World Customs Organization ("WCO") (*i.e.*, that articles containing such chips should be classified in the same headings as the corresponding articles not incorporating a musical mechanism) in several rulings: Headquarters Ruling Letter (HQ) 958397, dated December 19, 1995; HQ 959552, dated November 22, 1996; HQ 959043, dated April 11, 1997, and HQ 959403, dated April 11, 1997. In each of those rulings Customs noted that:

> In 1989, anticipating classification problems with respect to merchandise containing such musical mechanisms, the Customs Cooperation Council or CCC (now the World Customs Organization or WCO) provided guidance which Customs has long followed. With electronic chips having become relatively inexpensive and simple to install in a wide variety of products, the CCC suggested that merchandise containing battery-operated chips with speakers, should be classified in the same headings as the corresponding articles not incorporating such modules.

In light of the above, the intent of the drafters of the international Harmonized System was to take no notice of sound microchips, whether they produce musical or other sounds, in classifying goods that contain them. By application of Note 3 to Section XVI, and in accordance with the above guidance of the WCO, we believe the Sound Spa is a composite machine whose principal function is provided by the clock radio, not the sound microchip. Therefore, at GRI 1, the instant article is classified as a clock radio in heading 8527. Heading 8543 and the microchip are eliminated from further consideration in classifying the merchandise at issue.

Classification of the subject article within subheadings 8527.13 or 8527.19, HTSUS, has been suggested. Included within heading 8527, HTSUS, is "[r]eception apparatus * * * whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock[.]" Radiobroadcast reception apparatus are separated between apparatus capable of operating without an external source of power (subheadings 8527.12 through 8527.19, HTSUS) and apparatus incapable of operating without an external source of power (subheadings 8527.21 through 8527.29, HTSUS). In the first category are pocket sized radio cassette players (subheading 8527.12.00, HTSUS), other apparatus combined with sound recording or reproducing apparatus (subheading 8527.13, HTSUS), and other (than the above)(subheading 8527.19, HTSUS).

The "Stereo Sound Therapy" is not a pocket sized radio cassette player, so subheading 8527.12.00, HTSUS, is inapplicable. Subheading 8527.13, HTSUS, is also inapplicable because it provides for apparatus combined with sound recording or reproducing apparatus. As noted above, the microchip is not a sound reproducing device of heading 8527 because it is classified in heading 8543, HTSUS. Thus, subheading 8527.13 does not describe the merchandise. The goods are specifically and completely described in the residual provision, subheading 8527.19, as a radiobroadcast receiver combined with a clock.

Subheading 8527.19 incorporates all radios combined with other articles of the one-dash provision at issue. Of those apparatus captured in subheading 8527.19, subheading 8527.19.10 covers those, in pertinent part, valued not over $40 each, incorporating a clock or clock-timer, and not in combination with any other article. By operation of Note 3 to Section XVI, we find that the clock radio is specifically described in subheading 8527.19.10, HTSUS.

Holding:

The Stereo Sound Therapy is classifiable under subheading 8527.19.10, HTSUS, which provides for other reception apparatus for radiotelephony combined with sound recording

or reproducing apparatus, valued not over $40 each, incorporating a clock or clock-timer, not in combination with any other article, and not designed for motor vehicle installation.

Effect on Other Rulings:

NY D85257 is modified. In accordance with 19 U.S.C. §1625 (c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 6, 2000.

CLA–2 RR:CR:GC 963845 AML
Category: Classification
Tariff No. 8527.19.10

MR. ART TAYLOR
CONAIR CORPORATION
150 Milford Road
East Windsor, NJ 08520

Re: Reconsideration of NY C88482; a clock radio that incorporates a sound reproducing device.

DEAR MR. TAYLOR:

This is in regard to New York Ruling Letter (NY) C88482, issued to you by the Customs National Commodity Specialist Division, New York, on June 16, 1998. In that ruling, the "Deluxe Sound Therapy Relaxation System," a clock radio that incorporates a sound reproducing device, among other articles not relevant herein, was classified under subheading 8527.19.50, Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed the classification of the item and determined that it is incorrect. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published on May 31, 2000, in Vol. 34, No. 22 of the CUSTOMS BULLETIN, proposing to modify NY D85257 and to revoke the treatment pertaining to the clock radio that contains a microchip incorporated into the radio circuitry where it stores and reproduces sounds. The only comment received in response to this notice was in opposition to the proposal.

Facts:

The "Deluxe Sound Therapy Relaxation System" is a clock radio which, besides the radio function, can program and produce any of a selection of "natural" sounds: ocean waves, streams, forests, night sounds, heart beats and white noise. The sounds are stored on a microchip within the article. The FOB price of the article is less than $40.00.

Issue:

Whether the clock radio combined with sound reproducing apparatus is classifiable under subheading 8527.19.10, HTSUS, as other reception apparatus for radiobroadcasting, whether or not combined with sound recording or reproducing apparatus, valued not over $40 each, incorporating a clock or clock-timer, not in combination with any other article, and not designed for motor vehicle installation?

Law and Analysis:

Classification of imported merchandise is accomplished pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). Classification under the HTSUS is guided by the General Rules of Interpretation of the Harmonized System (GRI's). GRI 1, HTSUS,

states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]"

The HTSUS headings and subheadings under consideration are as follows:

8527	Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock:
	Radiobroadcast receivers capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy:
8527.13	Other apparatus combined with sound recording or reproducing apparatus:
	Other:
8527.13.60	Other.
8527.19	Other:
8527.19.10	Valued not over $40 each, incorporating a clock or clock-timer, not in combination with any other article, and not designed for motor vehicle installation.
8527.19.50	Other.
* * * * * * *	
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
	Other machines and apparatus:
	Other:
	Other:
8543.89.96	Other.

The legal notes to Section XVI provide, in pertinent part, that:

* * * * * * *

3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

* * * * * * *

Heading 8527, HTSUS, provides for various combinations of radios with clocks, tape players, tape recorders, CD players, and for models that have different sources of power, usually battery or electricity. The "Deluxe Sound Therapy Relaxation System" is a clock radio combined with an electronic sound microchip within the same housing. Because of the inclusion of the clock, alarm and sleep timer functions, the reasonable conclusion is that the article is intended for bedside use. The sound microchip has its own controls, and presumably shares the power source, circuitry and speaker of the radio. Considered separately, the electronic sound microchip would be classifiable under subheading 8543.89.96, HTSUS, as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85. See Headquarters Ruling Letter (HQ) 955116, dated October 8, 1993; HQ 953105, dated April 15, 1993; and HQ 954363, dated August 27, 1993, which found such articles to be classifiable in subheading 8543.80.90, HTSUS, the predecessor to subheading 8543.89.96, HTSUS.

The Harmonized Commodity Description And Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

As a result of amendments to the ENs made in 1989, the EN to heading 8543, HTSUS, provides, in pertinent part:

The heading includes, *inter alia*:

* * * * * * *

(13) Electronic musical modules for incorporation in a wide variety of utilitarian or other goods, *e.g.*, wrist watches, cups and greeting cards. These modules usually consist of an electronic integrated circuit, a resistor, a loudspeaker and a mercury cell. They contain fixed musical programmes.

EN 85.43(13) states that heading 8543 includes electronic music modules, to which the subject sound devices are akin. However, we note that musical mechanisms are also mentioned in the ENs to the music box provision, heading 9208, HTSUS, which states:

> Articles which incorporate a musical mechanism but which are essentially utilitarian or ornamental in function (for example, clocks, miniature wooden furniture, glass vases containing artificial flowers, ceramic figurines) **are not** regarded as musical boxes within the meaning of this heading. These articles are classified in the same headings as the corresponding articles not incorporating a musical mechanism [emphasis in original].
>
> Also, articles such as wristwatches, cups and greeting cards containing electronic musical modules **are not** regarded as goods of this heading. Such articles are classified in the same headings as the corresponding articles not incorporating such modules [emphasis in original].

Customs has recognized the treatment of such microchips by the World Customs Organization ("WCO") (*i.e.*, that articles containing such chips should be classified in the same headings as the corresponding articles not incorporating a musical mechanism) in several rulings: Headquarters Ruling Letter (HQ) 958397, dated December 19, 1995; HQ 959552, dated November 22, 1996; HQ 959043, dated April 11, 1997, and HQ 959403, dated April 11, 1997. In each of those rulings Customs noted that:

> In 1989, anticipating classification problems with respect to merchandise containing such musical mechanisms, the Customs Cooperation Council or CCC (now the World Customs Organization or WCO) provided guidance which Customs has long followed. With electronic chips having become relatively inexpensive and simple to install in a wide variety of products, the CCC suggested that merchandise containing battery-operated chips with speakers, should be classified in the same headings as the corresponding articles not incorporating such modules.

In light of the above, the intent of the drafters of the international Harmonized System was to take no notice of sound microchips, whether they produce musical or other sounds, in classifying goods that contain them. By application of Note 3 to Section XVI, and in accordance with the above guidance of the WCO, we believe the Sound Spa is a composite machine whose principal function is provided by the clock radio, not the sound microchip. Therefore, at GRI 1, the instant article is classified as a clock radio in heading 8527. Heading 8543 and the microchip are eliminated from further consideration in classifying the merchandise at issue.

Classification of the subject article within subheadings 8527.13 or 8527.19, HTSUS, has been suggested. Included within heading 8527, HTSUS, is "[r]eception apparatus * * * whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock[.]" Radiobroadcast reception apparatus are separated between apparatus capable of operating without an external source of power (subheadings 8527.12 through 8527.19, HTSUS) and apparatus incapable of operating without an external source of power (subheadings 8527.21 through 8527.29, HTSUS). In the first category are pocket sized radio cassette players (subheading 8527.12.00, HTSUS), other apparatus combined with sound recording or reproducing apparatus (subheading 8527.13, HTSUS), and other (than the above)(subheading 8527.19, HTSUS).

The "Deluxe Sound Therapy Relaxation System" is not a pocket sized radio cassette player, so subheading 8527.12.00, HTSUS, is inapplicable. Subheading 8527.13, HTSUS, is also inapplicable because it provides for apparatus combined with sound recording or reproducing apparatus. As noted above, the microchip is not a sound reproducing device of heading 8527 because it is classified in heading 8543, HTSUS. Thus, subheading 8527.13 does not describe the merchandise. The goods are specifically and completely described in the residual provision, subheading 8527.19, as a radiobroadcast receiver combined with a clock.

Subheading 8527.19 incorporates all radios combined with other articles of the one-dash provision at issue. Of those apparatus captured in subheading 8527.19, subheading 8527.19.10 covers those, in pertinent part, valued not over $40 each, incorporating a clock or clock-timer, and not in combination with any other article. By operation of Note 3 to Section XVI, we find that the clock radio is specifically described in subheading 8527.19.10, HTSUS.

Holding:

The Deluxe Sound Therapy Relaxation System is classifiable under subheading 8527.19.10, HTSUS, which provides for other reception apparatus for radiotelephony com-

bined with sound recording or reproducing apparatus, valued not over $40 each, incorporating a clock or clock-timer, not in combination with any other article, and not designed for motor vehicle installation.

Effect on Other Rulings:

NY C88482 is modified as it pertains to the Deluxe Sound Therapy Relaxation System. In accordance with 19 U.S.C. §1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

U.S. Customs Service

Proposed Rulemaking

19 CFR Parts 4, 19, 122, 123, 127, 141, and 142

RIN 1515–AC57

GENERAL ORDER WAREHOUSES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations principally to create a new class of bonded warehouse exclusively for the receipt of general order merchandise, and to include procedures for authorizing and operating general order warehouses. This proposal is in response to a recent increase in the amount of unentered merchandise being moved into general order facilities. This increase has resulted from changes in the law, and it has prompted the importing community to request that Customs put in place uniform, national procedures for approving and operating warehouses receiving general order merchandise.

In addition, changes are proposed to the Customs Regulations to implement certain amendments to the law made by the Customs modernization portion of the North American Free Trade Agreement Implementation Act. The amendments concern the circumstances where the title to unclaimed and abandoned merchandise vests in the Government, in lieu of sale of the merchandise at public auction.

DATES: Comments must be received on or before September 11, 2000.

ADDRESSES: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Gerard Bradley, Office of Field Operations, 202–927–0765.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Title VI of the North American Free Trade Agreement Implementation Act, 107 Stat. 2057 (Pub. L. 103–182; December 8, 1993), popularly

known as the Customs Modernization Act (Mod Act), amended a number of Customs and navigation laws.

In particular, section 656 of the Mod Act amended 19 U.S.C. 1448(a) to provide, among other things, that the owner or master of any vessel or vehicle, or agent thereof, would be required to notify Customs of any merchandise or baggage unladen from the vessel or vehicle, for which entry was not made within the time prescribed by law or regulation; and if entry were not made within the prescribed time, the master or person in charge of the importing vessel or vehicle, or agent thereof, would be responsible for such unentered merchandise until it was removed from the carrier's control and placed in general order status in accordance with 19 U.S.C. 1490.

In concert with this, section 658 of the Mod Act amended 19 U.S.C. 1490 by deleting the requirement that a Customs officer take unentered merchandise into Customs custody and send it to a bonded warehouse. Instead, carriers are now required to notify both Customs and a bonded warehouse of the unentered merchandise, and the bonded warehouse would then have to arrange for the transportation and storage of the merchandise at the risk and expense of the consignee.

These, and related, statutory amendments were implemented by a final rule document amending the Customs Regulations, that was published in the Federal Register (63 FR 51283) on September 25, 1998, as T.D. 98–74.

Based on the statutory amendments, and the Customs Regulations implementing them, imported merchandise could not remain at the wharf, pier or other place of unlading more than 15 calendar days after its landing; or, if transferred from the arriving carrier to any party under a Customs-authorized permit to transfer or in-bond entry, the merchandise could not remain in the custody of that party more than 15 calendar days after its receipt under a Customs-authorized permit to transfer or more than 15 calendar days after its arrival at the port of destination, as provided in §§ 4.37, 122.50, 123.10, Customs Regulations (19 CFR 4.37, 122.50, 123.10). There is no provision in these regulations for any extension of this 15-day period.

Customs and the trade have consequently seen an increase in the amount of unentered merchandise moving into general order facilities, including merchandise, such as hazardous materials, requiring specialized storage facilities. Due to this increase in merchandise moving into temporary storage in general order status, the trade community has sought the establishment of national, uniform criteria for the approval and operation of general order warehouses.

Accordingly, by this document, Customs is proposing that a new class of bonded warehouse, a Class 11 warehouse, be established exclusively to handle the receipt of general order merchandise as described in § 127.1, Customs Regulations (19 CFR 127.1). It is further proposed that a Class 3, 4, or 5 bonded warehouse, as described in § 19.1(a)(3), (4), or (5), Customs Regulations (19 CFR 19.1(a)(3), (4), or (5)), may like-

wise be used for the deposit of general order merchandise, but only if there is no Class 11 warehouse otherwise available to receive the merchandise, and provided the Class 3, 4, or 5 warehouse has also been certified by the port director as meeting the criteria for a Class 11 warehouse, following an application under § 19.2, Customs Regulations (19 CFR 19.2). So far as such warehouses are used for the purpose of handling general order goods, they will also be considered general order (Class 11) warehouses. Section 19.1, Customs Regulations (19 CFR 19.1), would be amended as necessary to address these matters.

Class 1 warehouses, which are premises owned or leased by the Government for the deposit of unentered, seized or unclaimed merchandise, would, however, be retained as such, should the exigencies of the service as determined by the applicable port director require their occasional use.

As already indicated, the application criteria set forth in § 19.2 would apply as well to a warehouse where general order merchandise is to be sent. In addition, as a condition for approval of the application to establish a warehouse facility, at the discretion of the port director, minimum space requirements could be imposed for the storage of general order merchandise. The port director would need to post an announcement of these requirements by a written notice at the customhouse, and by any appropriate Customs-authorized electronic data interchange system. An applicant will not be subject to any minimum space requirements that are posted after the filing of his application.

Furthermore, § 19.2(f) would be amended to provide, in the case of applications from a business entity to establish a bonded warehouse, that Customs may require the submission of fingerprints from all employees of the business entity, as opposed to only those of all officers and managing officials. This requirement would apply to applications generally to establish a Customs bonded warehouse, including a general order warehouse. In this regard, there is a reasonably perceived need under the circumstances for a more thorough, comprehensive scrutiny of applicants, consistent with Customs movement toward a post-audit environment and the spirit of "shared responsibility" embodied in the Customs modernization provisions of the North American Free Trade Agreement Implementation Act.

Additionally, a general order warehouse would have to satisfy the inventory and recordkeeping requirements in § 19.12, Customs Regulations (19 CFR 19.12). However, the warehouse would have to do so through an automated inventory control and recordkeeping system. Existing Class 3, 4 and 5 warehouses that handle general order merchandise would be allowed a reasonable "phase-in" period (specifically, 2 years) after which their recordkeeping systems, at least insofar as they cover general order merchandise, must likewise be automated. Section 19.12 would be revised accordingly.

To this end, Customs has recently seen an increase in the quantity of unentered, unclaimed merchandise being sent into general order, as

discussed above. Requiring an automated inventory system for such merchandise would enhance effectiveness in managing and monitoring the greater number of general order transactions, and thus augment the ability to track and safeguard this merchandise, which would benefit both the importing community as well as the Government. Specifically, an automated system would assist importers of unentered cargo by enabling its more rapid location and the faster resolution of any problems associated with the entry and clearance of the cargo. Also, as noted, it would help protect the potential interest of the Government in the property, given that, generally speaking, if unentered property remains unclaimed for 6 months from the date of its importation, the title to such property may vest in the United States, and the property may be retained for official Government use, in accordance with 19 U.S.C. 1491(b) (see *infra*).

As is currently the case, the proprietor of a general order warehouse must arrange for the transportation of the merchandise to, and its storage at, the warehouse facility. It is observed that the warehouse proprietor is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, that covers the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the carrier (or from any other party to whom custody of the merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry).

Sections 4.37, 19.9, 122.50 and 123.10, Customs Regulations (19 CFR 4.37, 19.9, 122.50 and 123.10), would be similarly amended in conformance with this latter, existing requirement. Also, for editorial purposes, in § 19.9, the term "bonded carrier" would be substituted in place of "cartman or lighterman".

In those cases where the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to relinquish custody of the merchandise to a Customs-approved bonded warehouse, the carrier or other party would be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

On the other hand, if Customs finds that the proprietor cannot accept the goods because they are required to be exported or destroyed, or for other good cause, the goods would remain in the custody of the arriving carrier or in the custody of any party to whom the carrier has transferred the merchandise under a Customs-authorized permit to transfer or in-bond entry. In the event that merchandise cannot be accepted into a general order warehouse, and its exportation or destruction is required, as is the case with certain of the special categories of merchandise enumerated in § 127.28, Customs Regulations (19 CFR 127.28), the carrier or other party would be responsible under bond for exporting or destroying the goods, as necessary.

To implement the foregoing requirements, §§ 4.37, 122.50 and 123.10 would be further amended accordingly. In addition, § 127.13, Customs Regulations (19 CFR 127.13), would be amended consistent with §§ 4.37, 122.50 and 123.10.

Furthermore, where the warehouse proprietor has taken merchandise into his custody, the proprietor would assume the responsibility and expense for the destruction of the merchandise, in the event that such destruction is found to be warranted under the circumstances (*i.e.*, where the port director concludes that the merchandise has no commercial value or cannot be disposed of at public auction (unsalable)). The port director would authorize such destruction on a CF 3499, or on a similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs. However, before destroying the merchandise, the warehouse proprietor would first have to make a reasonable effort to identify and inform the importer (owner) or consignee of the merchandise regarding its intended destruction. Section 127.14, Customs Regulations (19 CFR 127.14), would be revised to include these additional requirements.

Also, the general authority citation for part 127, Customs Regulations (19 CFR part 127), appearing after its table of contents, would be revised, and specific authority citations would be added for certain regulatory sections in part 127 whose authority is not already included in the general authority citation for the part. Currently, the specific statutory authority citations for numerous regulatory sections in part 127 are set forth in parentheses immediately following the text of the sections. To eliminate unnecessary repetition, these parenthetical citations of authority appearing after the individual sections would be deleted.

Mod Act Changes; Title to Unclaimed Merchandise Vesting in Government

In addition, § 127.14(a) would be revised and a new subpart E would be added to part 127 essentially to conform with and implement a number of amendments made to 19 U.S.C. 1491 under section 659 of the Mod Act. Section 1491 previously provided that unclaimed and abandoned merchandise would be sold at public auction.

However, 19 U.S.C. 1491, as amended by section 659 of the Mod Act, now provides that, as an alternative to selling unclaimed and abandoned merchandise at public auction, the title to the merchandise may instead vest in the United States following notice to all known interested parties, unless the merchandise is timely entered or withdrawn for consumption and all duties, taxes, fees, charges and other expenses accruing on the merchandise are paid. As amended, 19 U.S.C. 1491 also provides that in the event that title to such merchandise does vest in the Government, Customs may retain the property for its own official use, transfer the property to any other Federal, state or local agency, destroy the property, or otherwise dispose of it.

Moreover, where any party who lost title to, or a substantial interest in, the merchandise, by virtue of title having vested in the Government, can establish such title or interest, section 1491, as amended, provides that the party, upon filing a timely and proper petition, may be paid the amount that it is believed the party would have received had the merchandise been sold and a proper claim for the surplus of the proceeds of sale been made under 19 U.S.C. 1493.

In this latter regard, 19 U.S.C. 1493 provides that any surplus of proceeds from the sale of unclaimed and abandoned merchandise, that remains after the payment of certain enumerated charges, expenses, duties, taxes and fees, will be deposited in the Treasury, unless a proper claim for the surplus is filed with Customs.

TIME LIMIT WITHIN WHICH TO MAKE ENTRY; CONFORMING CHANGES

In conformance with the changes already made under T.D. 98–74 to §§ 4.37, 122.50, and 123.10, Customs Regulations, as discussed above, §§ 141.5 and 142.2, Customs Regulations (19 CFR 141.5, 142.2), would likewise be changed to require that the entry of merchandise be made within 15 calendar days (as opposed to 5 working days) after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond. Also, the reference to entry having to be made "by the consignee" would be removed from these sections, inasmuch as the entry law (see 19 U.S.C. 1484(a)) no longer requires this.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

The proposed amendments primarily dealing with general order warehouses are intended to expedite the handling and disposition of general order merchandise, and to further facilitate consistent and uniform treatment in the administration of general order warehouses. Also, the proposed amendments dealing with the Mod Act are intended to conform with, implement and enforce the provisions of the statutory law and ensure the protection of the revenue. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory

analysis or other requirements of 5 U.S.C. 603 and 604. Nor do they meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

PAPERWORK REDUCTION ACT

The collections of information in this notice of proposed rulemaking have in part already been reviewed by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515–0121 (Information to be supplied by owner or lessee in support of application to establish a bonded warehouse facility); and 1515–0220 (Notification regarding imported merchandise or baggage for which entry has not been made). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The remaining collection of information in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This collection of information is contained in §§ 4.37(c), 19.9(a), 122.50(c), and 123.10(c). This information is necessary to expedite the handling and disposition of general order merchandise; ensure that merchandise and baggage imported into the United States has been properly accounted for in accordance with the requirements of the statutory law; and facilitate consistent and uniform treatment in the administration of general order warehouses. The likely respondents and/or recordkeepers are business organizations, including importers and carriers.

Estimated total annual reporting and/or recordkeeping burden: 6600 hours.

Estimated average annual burden per respondent/recordkeeper: 33 hours.

Estimated number of respondents and/or recordkeepers: 200.

Estimated annual frequency of responses: 20,000.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229. Comments should be submitted within the same time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection

techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, would be appropriately revised upon adoption of the proposal as a final rule.

List of Subjects

19 CFR Part 4

Cargo vessels, Common carriers, Customs duties and inspection, Entry, Exports, Imports, Maritime carriers, Passenger vessels, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 19

Bonds, Customs duties and inspection, Freight, Imports, Licensing, Reporting and recordkeeping requirements, Warehouses.

19 CFR Part 122

Air carriers, Aircraft, Airports, Air transportation, Baggage, Bonds, Customs duties and inspection, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR Part 123

Aircraft, Canada, Customs duties and inspection, Imports, International boundaries, International traffic, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Trade agreements, Vehicles, Vessels.

19 CFR Part 127

Customs duties and inspection, Exports, Freight, Reporting and recordkeeping requirements.

19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 142

Administrative practice and procedure, Common carriers (Carrier initiative program), Customs duties and inspection, Entry of merchandise (Line release), Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

It is proposed to amend parts 4, 19, 122, 123, 127, 141, and 142, Customs Regulations (19 CFR parts 4, 19, 122, 123, 127, 141 and 142), as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the relevant specific authority citation would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * * * *

Section 4.37 also issued under 19 U.S.C. 1448, 1457, 1490;

* * * * * * *

2. It is proposed to amend § 4.37 by adding a sentence after the third sentence in paragraph (c), by redesignating paragraphs (d), (e), (f), and (g), respectively, as paragraphs (e), (f), (g), and (h), and adding a new paragraph (d), and by adding two sentences at the end of paragraph (e) as thus redesignated, to read as follows:

§ 4.37 General order.

* * * * * * *

(c) * * * The warehouse proprietor is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or from any party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (see § 19.9 of this chapter). * * *

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to relinquish custody of the merchandise to a Customs-approved bonded warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (see § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (see §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * * * *

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS, AND CONTROL OF MERCHANDISE THEREIN

1. The general and relevant specific authority citations for part 19 would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624;

Section 19.1 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1560, 1561, 1562;

* * * * * * *

2. It is proposed to amend § 19.1 by adding a heading to paragraph (a), by revising paragraph (a)(1), by adding a new paragraph (a)(10), by

adding a heading to paragraph (b), and by adding a new paragraph (c), to read as follows:

§ 19.1 Classes of customs warehouses.

(a) *Classifications.* * * *

(1) *Class 1.* Premises owned or leased by the Government, when the exigencies of the service as determined by the port director so require, and used for the storage of merchandise undergoing examination by Customs, under seizure, or pending final release from Customs custody. Unclaimed merchandise stored in such premises will be held under "general order."

* * * * * * *

(10) *Class 11.* Bonded warehouses, known as "general order warehouses", established for the storage and disposition exclusively of general order merchandise as described in § 127.1 of this chapter.

(b) *Manipulation.* * * *

(c) *General order.* General order merchandise as described in § 127.1 of this chapter will be stored and disposed of in a Class 11 warehouse. However, general order merchandise may also be sent to a warehouse of Class 3, 4, or 5, but only if there is no Class 11 warehouse otherwise available to receive the merchandise, and provided the Class 3, 4, or 5 warehouse has also been certified by the port director as meeting the criteria for a Class 11 warehouse, following an application under § 19.2, Customs Regulations (19 CFR 19.2). So far as such warehouses are used for the purpose of handling general order goods, they will also be considered general order (Class 11) warehouses. If there is no space at a warehouse of any of these classes available, the proprietor of such a warehouse, with the approval of the port director of the port nearest to where the warehouse is located, may rent or lease additional suitable premises for the storage of general order merchandise.

3. It is proposed to amend § 19.2 by adding a new paragraph (d), and by revising the second sentence of paragraph (f), to read as follows:

§ 19.2 Applications to bond.

* * * * * * *

(d) An applicant desiring to establish a general order warehouse may need to establish, as a condition of approval of the application, that the warehouse will meet minimum space requirements imposed by the port director to accommodate the storage of general order merchandise. Any space requirements will be posted by written notice at the customhouse and on the appropriate Customs-authorized electronic data interchange system. An applicant will not be subject to any minimum space requirements that are posted after the filing of his application.

* * * * * * *

(f) * * * The port director may require an individual applicant to submit fingerprints on Standard Form 87 at the time of filing the application, or in the case of applications from a business entity, may require

the fingerprints, on Standard Form 87, of all employees of the business entity.

4. It is proposed to amend § 19.9 by revising paragraph (a) to read as follows:

§ 19.9 General order, abandoned, and seized merchandise.

(a) *Acceptance of merchandise.* The general order warehouse proprietor is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or from any party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry). A joint determination will be made by the warehouse proprietor and the bonded carrier of the quantity and condition of the goods or articles so delivered to the warehouse. Any discrepancy between the quantity and condition of the goods and that reported on CF 6043, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, will be reported to the port director within two working days of the joint determination.

* * * * * * *

5. It is proposed to amend § 19.12 by revising the introductory text in paragraph (a) to read as follows:

§ 19.12 Inventory control and recordkeeping system.

(a) *Systems capability.* The proprietor of a Class 11 general order warehouse as described in § 19.1 must have an automated inventory control and recordkeeping system. Proprietors of existing Class 3, 4, or 5 warehouses as described in § 19.1 certified before [the date this rule becomes final] to receive general order merchandise must have automated inventory control and recordkeeping systems in place with respect to general order merchandise after a period of 2 years from the date this rule becomes final. All other warehouse proprietors have a choice of maintaining manual or automated inventory control and recordkeeping systems or a combination of manual and automated systems. All inventory control and recordkeeping systems must be capable of:

* * * * * * *

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

2. It is proposed to amend § 122.50 by revising the heading, adding a sentence after the third sentence in paragraph (c), by redesignating

paragraphs (d), (e) and (f), respectively, as paragraphs (e), (f) and (g), and adding a new paragraph (d), and by adding two sentences at the end of paragraph (e) as thus redesignated, to read as follows:

§ 122.50 General order merchandise.

* * * * * * *

(c) * * * The warehouse proprietor is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or from any party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (see § 19.9 of this chapter). * * *

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to relinquish custody of the merchandise to a Customs-approved bonded warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (see § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (see §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * * * *

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 would continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

* * * * * * *

2. It is proposed to amend § 123.10 by revising the heading, adding a sentence after the third sentence in paragraph (c), by redesignating paragraphs (d), (e) and (f), respectively, as paragraphs (e), (f) and (g), and adding a new paragraph (d), and by adding two sentences at the end of paragraph (e) as thus redesignated, to read as follows:

§ 123.10 General order merchandise.

* * * * * * *

(c) * * * The warehouse proprietor is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs docu-

ment as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or from any party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (see § 19.9 of this chapter). * * *

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to relinquish custody of the merchandise to a Customs-approved bonded warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (see § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (see §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * * * *

PART 127—GENERAL ORDER, UNCLAIMED AND ABANDONED MERCHANDISE

1. The general authority citation for part 127 would be revised, and specific sectional authority citations would be added, to read as follows:

Authority: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1493, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 5753.

Section 127.12 also issued under 19 U.S.C. 1753;
Section 127.14 also issued under 19 U.S.C. 1555, 1556, 1557;
Section 127.21 also issued under 19 U.S.C. 1753;
Section 127.28 also issued under 15 U.S.C. 2612, 26 U.S.C. 5688;
Sections 127.31, 127.36, 127.37 also issued under 19 U.S.C. 1753.

2. It is proposed to amend part 127 by removing the statutory authority citations that appear in parentheses immediately below the texts of §§ 127.1, 127.2, 127.11–127.14, 127.21, 127.23–127.29, and 127.31–127.37.

3. It is proposed to amend § 127.13 by revising paragraph (a) to read as follows:

§ 127.13 Storage of unclaimed and abandoned merchandise.

(a) *Place of storage.* A Class 11 bonded warehouse or warehouse of Class 3, 4, or 5, certified by the port director as qualified to receive general order merchandise, will be responsible for the transportation and storage of unclaimed and abandoned merchandise, upon due notification to the proprietor of the warehouse by the arriving carrier (or other party to whom the carrier has transferred the merchandise under a

Customs-authorized permit to transfer or in-bond entry), as provided in §§ 4.37(c), 122.50(c), and 123.10(c) of this chapter. If no warehouse of these classes is available to receive general order merchandise, or if the merchandise requires specialized storage facilities which are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, will direct the storage of the merchandise by the carrier or by any other appropriate means.

* * * * * * *

4. It is proposed to amend § 127.14 by revising paragraph (a) to read as follows:

§ 127.14 Disposition of merchandise in Customs custody beyond time fixed by law.

(a) *Merchandise subject to sale or other disposition.* (1) *General.* If storage or other charges due the United States have not been paid on merchandise remaining in Customs custody after the expiration of the bond period in the case of merchandise entered for warehouse, or after the expiration of the general order period, as defined in § 127.4, in any other case, even though any duties due have been paid, such merchandise will be sold as provided in subpart C of this part, retained for official use as provided in subpart E of this part, destroyed, or otherwise disposed of as authorized by the Commissioner of Customs under the law, unless the merchandise is entered or withdrawn for consumption in accordance with paragraph (b) of this section.

(2) *Destruction of merchandise.* (i) *Proprietor responsibility.* If the port director concludes that merchandise in general order has no commercial value or is otherwise unsalable and cannot be disposed of at public auction (see § 127.29), and that its destruction is warranted, the warehouse proprietor must assume responsibility under bond, including the expense, for destroying the merchandise (see § 113.63(c)(3) of this chapter). The port director will authorize such destruction on Customs Form (CF) 3499, or on a similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs.

(ii) *Notice of destruction.* Before destroying the merchandise, the warehouse proprietor must first make a reasonable effort under bond (see § 113.63(b) and (c) of this chapter), to identify and inform the importer (owner) or consignee regarding the intended destruction of the merchandise. When the appropriate party is identified, notice of destruction will be provided to the party on Customs Form (CF) 5251, appropriately modified, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, at least 30 calendar days prior to the date of intended destruction.

* * * * * * *

5. It is proposed to amend part 127 by adding a new subpart E to read as follows:

SUBPART E—TITLE TO UNCLAIMED AND ABANDONED MERCHANDISE VESTING IN GOVERNMENT

SUBPART E—TITLE TO UNCLAIMED AND ABANDONED MERCHANDISE VESTING IN GOVERNMENT

§ 127.41 Government title to unclaimed and abandoned merchandise.

(a) *Vesting of title in Government.* At the end of the 6-month period noted in § 127.11, at which time merchandise having thus remained in Customs custody is considered as unclaimed and abandoned, the port director, with the concurrence of the Commissioner of Customs, may, in lieu of sale of the merchandise as provided in subpart C of this part, provide notice to all known interested parties under paragraph (b) of this section that the title to such merchandise will be considered as vesting in the United States, free and clear of any liens or encumbrances, as of the 30th day after the date of the notice unless, before the 30th day, the merchandise is entered or withdrawn for consumption and all duties, taxes, fees, transfer and storage charges, and any other expenses that may have accrued on the merchandise are paid.

(b) *Notice to known interested parties.* Notice that the title to unclaimed and abandoned merchandise will vest in the United States, as described in paragraph (a) of this section, will be sent to the following parties on Customs Form (CF) 5251, appropriately modified, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs:

(1) Importer, if known;

(2) Consignee, if name and address can be ascertained;

(3) Shipper, or the shipper's representative or agent, if merchandise is consigned to order or the consignee cannot be ascertained; and

(4) Any other known interested parties.

(c) *Appraisement of merchandise.* Before title to unclaimed and abandoned merchandise is vested in the United States, the merchandise will be appraised in accordance with section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a).

§ 127.42 Disposition of merchandise owned by Government.

(a) *Disposition.* If title to any unclaimed and abandoned merchandise vests in the United States under § 127.41, the merchandise may be retained by Customs for its official use, or in Customs discretion, the merchandise may be transferred to any other Federal, state or local agency, destroyed or disposed of otherwise.

(b) *Payment of charges and expenses.* All transfer and storage charges or expenses accruing on retained or transferred merchandise will be paid by the receiving agency.

§ 127.43 Petition of party for surplus proceeds had merchandise been sold.

(a) *Filing of petition.* Under section 491(d), Tariff Act of 1930, as amended (19 U.S.C. 1491(d)), any party who can satisfactorily establish title to or a substantial interest in unclaimed and abandoned merchandise, the title to which has vested in the United States, may file a petition for the surplus proceeds that would have been payable to the party had the merchandise been sold and a proper claim made under section 493, Tariff Act of 1930, as amended (19 U.S.C. 1493).

(b) *When and with whom filed.* The petition may be filed with the port director at whose direction the title to the merchandise was vested in the United States. If the party received notice under § 127.41(b), the petition must be filed within 30 calendar days after the day on which title vested in the United States. If the party can satisfactorily establish that such notice was not received, the party must file the petition within 30 calendar days of learning of the vesting but not later than 90 calendar days from the vesting.

(c) *Evidence required.* The petition must show the party's title to or interest in the merchandise, and be supported, as appropriate, with the original bill of lading, bill of sale, contract, mortgage, or other satisfactory documentary evidence, or a certified copy of the foregoing. Also, if applicable, the petition must be supported by satisfactory proof that the petitioner did not receive notice that title to the merchandise would vest in the United States and was in such circumstances as prevented the receipt of notice.

(d) *Payment of claim.* If the claim of the owner, consignee, or other party having title to or a substantial interest in the merchandise, is properly established as provided in this section, the party may be paid out of the Treasury of the United States the amount that it is believed the party would have received under 19 U.S.C. 1493 had the merchandise been sold and a proper claim for the surplus of the proceeds of sale been made under that provision (see § 127.36). In determining the amount that may have been payable under 19 U.S.C. 1493, given that the merchandise was not in fact sold at public auction under 19 U.S.C. 1491(a), the appraisement of the merchandise, as provided in § 127.41(c), will be taken into consideration. By virtue of the authority delegated to the port director in this matter, any payment made as provided under this paragraph in connection with the filing of a petition under paragraph (b) of this section will be final and conclusive on all parties.

(e) *Doubtful claim.* Any doubtful claim for payment along with all pertinent documents and information available to the port director will be forwarded to the Assistant Commissioner, Office of Finance, for instructions. The decision of the Assistant Commissioner, Office of Finance, with respect to any petition filed under this section will be final and conclusive on all parties.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 would continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. It is proposed to revise § 141.5 to read as follows:

§ 141.5 Time limit for entry.

Merchandise for which entry is required will be entered within 15 calendar days after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond. Merchandise for which timely entry is not made will be treated in accordance with § 4.37 or § 122.50 or § 123.10 of this chapter.

PART 142—ENTRY PROCESS

1. The authority citation for part 142 would continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. It is proposed to amend § 142.2 by revising paragraph (a) to read as follows:

§ 142.2 Time for filing entry.

(a) *General rule: After arrival of merchandise.* Merchandise for which entry is required will be entered within 15 calendar days after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond.

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RAYMOND W. KELLY,
Commissioner of Customs.

Approved: May 19, 2000.
DENNIS M. O'CONNELL,
Acting Deputy Assistant Secretary of the Treasury.

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